

# Memorandum

---

**Date:** December 19, 2003

**To:** Patrick Cunningham, Deputy Director  
Nancy Wrona, Director, Air Quality Division  
Karen Smith, Director, Water Quality Division  
Shannon Davis, Director, Waste Programs Division  
David Esposito, Assistant Director, Southern Regional Office  
James Sedillo, Assistant Director, Northern Regional Office  
Compliance & Enforcement Committee Members

**Through:** Stephen A. Owens, Director

**From:** Henry Darwin, Enforcement Coordinator

**Subject:** Fourth Quarter 2003 Update to the Compliance and Enforcement Handbook

Attached are the most recent changes to the Compliance and Enforcement Handbook (i.e., the Fourth Quarter 2003 Update Summary and redlined chapters and appendices created from the last publicly available version of the Handbook). These changes have been reviewed by the Compliance and Enforcement Committee (CEC) and were presented to the Compliance and Enforcement Oversight Committee (Oversight Committee) on November 19, 2003. I have requested comments from both the CEC and Oversight Committee. I received none.

Briefly, the attached revisions:

- Modify the enforcement approval procedures to require Division Director or Regional Director approval for all Notices of Violation, and Agency Director approval for all formal enforcement actions, including civil settlements (per the September 2, 2003 memo from Steve Burr).
- Add two tables summarizing the enforcement approval procedures, one for the Phoenix Office and one for the Regional Offices.
- Require stipulated penalties/liquidated damages for Consent Orders.
- Change the name and language of the NOV closure letter (reserving further action) to emphasize that letter does not close the case.

The ICE database will be modified to incorporate these changes, as will the Handbook and associated boilerplates available on the ADEQ intranet. These changes, along with the summary and redline showing all changes from the last publicly available version of the Handbook (i.e., changes made in the First Quarter 2003 Update and this Update), will be made available for public comment via the ADEQ web page. ADEQ will review any comments received from the public as part of the First Quarter 2004 Update.

# **Fourth Quarter 2003 Compliance & Enforcement Handbook**

## **Update Summary**

### **Substantive Changes**

- 1) Chapter 3: Inspection Procedures
  - Procedures in Step 7 modified to require approval by the Division Director or Regional Office Director prior to issuance of a Notice of Violation.
  - Reference to NOV Closure Letter (reserving further action) changed to Compliance Documented Letter.
- 2) Chapter 4: Violation Categories
  - Description of Significant Non-Compliance (SNC) modified to allow a Division Director or Regional Office Director to authorize the issuance of a Notice of Opportunity to Correct for SNC.
  - Procedure for listing a violation as major or minor in footnote modified to require Director approval.
- 3) Chapter 5: Informal Compliance Assurance Tools
  - Description of NOV modified to reflect new issuance process requiring Division Director or Regional Office Director approval.
  - Description of Notice of Environmental Nuisance modified to reflect new issuance process requiring Division Director or Regional Office Director approval.
- 4) Chapter 7: Enforcement Escalation Procedures
  - Procedure for listing a violation as major or minor in footnote modified to require Director approval.
  - Procedure in Step 3 modified to require Division Director or Regional Office Director approval prior to issuance of an NOV.
  - Step 4 added to describe the process for seeking Division Director or Regional Office Director approval prior to issuance of an NOV and the ability of the Division Director or Regional Office Director to change an NOV to an NOC based upon the circumstances of the violation.
  - Step 6 modified to require Division Director or Regional Office Director Approval prior to issuing an NOV Closure Letter that does not reserve further action.
  - Reference to NOV Closure Letter (reserving further action) changed to Compliance Documented Letter.
  - Addition of a new requirement that the Director approve a draft Consent Order via the boilerplate Enforcement Action/Settlement Approval form (B39).
- 5) Chapter 8: Penalty Determinations
  - Added requirement that stipulated penalties and/or liquidated damages be included in all Consent Orders.
- 6) Chapter 9: Enforcement Approval Procedures
  - Description of new enforcement approval procedures added to introduction. Includes process for obtaining the Director's verbal approval.

- Added reference to two new tables (one for the Phoenix office and one for the regional offices that reflect the enforcement approval procedures.
  - Modified NOV/NEN approval procedure to require the Division Director or Regional Director approval prior to issuance.
  - Added procedure for Notice of Violation Closure Letter (with no further action) issuance which requires Division Director or Regional Office Director Approval.
  - Modified Consent Order, Abatement Order, and Compliance Order approval processes to differentiate between the Phoenix office and the Regional Offices. Draft Orders by the Phoenix office must be approved by the Director via the Enforcement Action/Settlement Approval form prior to being sent to the responsible party. The Decision on whether to pursue an Order will be made by the appropriate Division Director, even for those cases originating in a Regional Office. Draft Orders by the Regional Offices must be routed through the appropriate Division Director to the Director for approval using the Enforcement Action/Settlement Approval form.
  - Procedure for issuing a Compliance Order with Civil Administrative Penalty under the drinking water program modified to allow the Division Director to issue such orders without the Director's approval under certain circumstances based upon the size and type of drinking water system and the size of the penalty.
  - Procedure for suspending or revoking a license modified to require the Director's approval using the Enforcement Action/Settlement Approval form.
  - Added procedure for Termination of an Administrative Order which requires approval by the appropriate Division Director.
  - Added procedure for Civil Settlements which requires the Director's approval of all civil settlements using the Enforcement Action/Settlement Approval form. The new procedure allows for settlement discussions without advanced approval so long as the responsible party is informed from the outset that the Director's approval is required before final settlement.
  - Modified Criminal Referral procedures to include review by the Director and remove review by the Office of Special Counsel. Removed reference to an expedited process due to new process for obtaining the Director's verbal approval.
  - Modified Board of Technical Registration Referral procedures to include review by the Director and remove review by the Office of Special Counsel.
- 7) Chapter 14: Special Enforcement Considerations for the UST Corrective Action Section
- NOV issuance process modified to include need for Division Director approval.
  - Reference to UST Corrective Action boilerplate NOV Closure letter (reserving further action) changed to UST Corrective Action Compliance Documented Letter (reserving further action).
- 8) Chapter 15: Special Enforcement Consideration for Spills and Participation in the VRP
- Modified Step 4 to require Division Director or Regional Office Director approval prior to issuance of an NOV.
  - Reference to NOV Closure Letter (reserving further action) changed to Compliance Documented Letter.
- 9) Boilerplate Case Development Memorandum for Filing a Civil Complaint (B3)

- Added Deputy Director to routing.
  - Added Section for describing the environmental penalty history for the facility, the company, and the types of violations at issue in the case.
- 10) Boilerplate Case Development Memorandum for Negotiating a Civil Settlement (B4)
- Added Deputy Director to routing.
  - Added Section for describing the environmental penalty history for the facility, the company, and the types of violations at issue in the case.
- 11) Boilerplate Consent Order (B10)
- Added provision for stipulated penalties for violation of Consent Order.
- 12) Criminal Information Transmittal Memorandum (B11)
- Added Deputy Director to routing.
- 13) Boilerplate Notice of Violation Closure Letter (Reserving Further Action) (B20)
- Changed name of letter to Compliance Documented Letter (Reserving Further Action).
  - Removed all reference to “closure” and “closed” to emphasize that even though the terms of the NOV have been met, ADEQ is reserving further action.
- 14) Boilerplate Notice of Inspection Rights Form (B23)
- Web link to Arizona Revised Statutes changed to reflect new address.
- 15) Boilerplate Request for Assignment of an Assistant Attorney General (B24)
- Added Deputy Director to routing.
- 16) Boilerplate UST Corrective Action NOV Closure Letter (Reserving Further Action) (B27)
- Changed name of letter to UST Corrective Action Compliance Documented Letter (Reserving Further Action).
  - Removed all reference to “closure” and “closed” to emphasize that even though the terms of the NOV have been met, ADEQ is reserving further action.
- 17) Boilerplate Notice of Violation Closure Letter (for Participation in the Voluntary Remediation Program) (B33)
- Changed name of letter to Compliance Documented Letter (for Participation in the Voluntary Remediation Program).
  - Removed all reference to “closure” and “closed” to emphasize that even though the terms of the NOV have been met, ADEQ is reserving further action.
- 18) Boilerplate Enforcement Action/Settlement Approval Form
- Added as B39.
  - Required for obtaining the Director’s approval of formal enforcement actions and civil settlements.
- 19) Summary of Enforcement Approval Procedures - Phoenix Office
- Added as M8.
  - Summarizes in table form, the approvals needed to initiate and close both informal and formal enforcement actions by ADEQ’s Phoenix Office.
- 20) Summary of Enforcement Approval Procedures - Regional Offices
- Added as M9.
  - Summarizes in table form, the approvals needed to initiate and close both informal and formal enforcement actions by ADEQ’s Regional Offices.

### Non-Substantive Changes

#### 1) Appendix Table

- Added new boilerplates and modified version dates to reflect changes made in this update.

**Air Quality Violations Moved from Major Violations List (L1) to Minor Violations List (L2)**

| CITATION               | DESCRIPTION OF VIOLATION  |
|------------------------|---|
| A.A.C. R18-2-304(H)    | Failure to include a Certification Statement of Truth, Accuracy, and Completeness, signed by a responsible official in a report or a compliance certification submitted to ADEQ.  |
| A.A.C. R18-2-306.02(D) | Failure to log required information associated with an actual emissions increase or decrease authorized as a trade under an emissions cap.  |
| A.A.C. R18-2-324(A)    | Operation of portable equipment covered under a county air quality permit outside of the jurisdiction authorized by the permit.   |
| A.A.C. R18-2-324(B)    | Failure to adequately notify ADEQ and the county air pollution control officer prior to commencing operation of a portable source in a new county.  |
| A.A.C. R18-2-324(B)    | Operation of portable equipment proposed to be covered under a county air quality permit, in a location outside of the county without first obtaining an air quality permit from ADEQ.  |
| A.A.C. R18-2-324(C)    | Failure to obtain a permit from ADEQ prior to renting or leasing portable equipment.  |
| A.A.C. R18-2-324(C)    | Failure to provide a copy of the permit to the renter or lessee of portable equipment.  |
| A.A.C. R18-2-324(D)    | Failure to notify ADEQ and any air quality control officer with jurisdiction over the geographic area that includes the new location of the equipment, at least 10 working days prior to transferring permitted portable equipment from one location to another.  |
| A.A.C. R18-2-329(B)    | Failure to submit to ADEQ a quarterly report of the status of a source and construction progress and copies of any reports required under a federal delayed compliance order or consent decree.   |
| A.A.C. R18-2-602(A)    | Causing, suffering, allowing, or permitting the ignition or maintaining of an open outdoor fire.  |
| A.A.C. R18-2-602(E)(2) | Use of an outdoor open fire for the disposal of ordinary household trash without first obtaining permission in writing from ADEQ, or from the control officer of the county, district or region in which such fire occurs.  |
| A.A.C. R18-2-604(A)    | Failure to take reasonable precautions to limit excessive amounts of particulate matter from becoming airborne from the construction, use, alteration, repair, demolition, clearing, leveling, earth movement or excavation of a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area. |
| A.A.C. R18-2-604(B)    | Failure to take reasonable precautions to limit excessive amounts of particulate matter from becoming airborne from a vacant lot, or an urban or suburban open area to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses.   |

| CITATION            | DESCRIPTION OF VIOLATION  |
|---------------------|---|
| A.A.C. R18-2-604(C) | Operation of a motor vehicle for recreational purposes in a dry wash, riverbed or in an open area in such a way as to cause or contribute to visible dust emissions which cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises.  |
| A.A.C. R18-2-605(A) | Failure to take reasonable precautions to limit excessive amounts of particulate matter from becoming airborne, from the construction or reconstruction of a roadway or alley by employing temporary paving, dust suppressants, wetting down, detouring or other means.   |
| A.A.C. R18-2-605(B) | Failure to take reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne during the transportation of materials by wetting, applying dust suppressants, or covering the load.   |
| A.A.C. R18-2-606    | Failure to take reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne from crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust through the use of spray bars and nozzles, wetting agents, dust suppressants, covering the load, or hoods. |
| A.A.C. R18-2-607(A) | Failure to take reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne from the stacking, piling, or other storage of organic or inorganic dust producing materials, such as chemical stabilization, wetting, or covering.  |
| A.A.C. R18-2-607(B) | Failure to operate stacking and reclaiming machinery at all times with a minimum fall of material and in such a manner, or with the use of spray bars and nozzles and wetting agents, as to prevent excessive amounts of particulate matter from becoming airborne.   |
| A.A.C. R18-2-608    | Failure to take reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne from construction of mineral tailings piles, such as by wetting, chemical stabilization, re-vegetation or other such means as approved by ADEQ.  |
| A.A.C. R18-2-609    | Failure to take reasonable precautions, while performing agriculture practices including tilling of land and application of fertilizers, outside the "Phoenix planning area", as defined in Title 40 Code of Federal Regulations Part 81.303, in order to prevent excessive amounts of particulate matter from becoming airborne.   |
| A.A.C. R18-2-725(B) | Failure to reduce solvent emissions by at least 90% from any existing dry cleaning establishment using non-photochemically reactive petroleum solvents.   |
| A.A.C. R18-2-726    | Failure to minimize dust emissions to the atmosphere from sand blasting or other abrasive blasting operations through the use of good modern practices such as wet blasting or the use of effective enclosures with dust collection equipment.  |
| A.A.C. R18-2-727(A) | Failure to minimize organic solvent emissions from spray painting operations.   |

| CITATION            | DESCRIPTION OF VIOLATION  |
|---------------------|---|
| A.A.C. R18-2-727(A) | Failure to conduct spray painting operations (other than architectural coating and spot painting) in an enclosed area equipped with controls to contain no less than 96% of the over spray, minimizing organic solvent emissions.   |
| A.A.C. R18-2-729(A) | Failure to collect fugitive dust, lint, bolls, cotton seed or other material emitted from any cotton gin or lying loose in a yard and dispose of in an efficient manner or failure to take reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne in accordance with A.A.C. R18-2-604 through A.A.C. R18-2-607. |
| A.A.C. R18-2-801(B) | Emissions of smoke or dust in excess of 40% opacity from a mobile source.   |
| A.A.C. R18-2-802(A) | Emissions of smoke in excess of 40% opacity for any period greater than 10 consecutive seconds, from off-road machinery.  |
| A.A.C. R18-2-803    | Emissions of smoke in excess of 20% opacity from a heater-planer unit operated for the purpose of reconstructing asphalt pavements.   |
| A.A.C. R18-2-804(A) | Emissions of smoke or dust in excess of 40% opacity for any period greater than 10 consecutive seconds, from roadway and site cleaning machinery.   |
| A.A.C. R18-2-804(B) | Failure to take reasonable precautions, such as by applying dust suppressants, to prevent particulate matter from becoming airborne from the cleaning of any site, roadway, or alley.   |
| A.A.C. R18-2-804(B) | Failure to remove earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or other means.  |
| A.A.C. R18-2-805(A) | Emissions of smoke from an asphalt or tar kettle in excess of 40% opacity for any period greater than 10 consecutive seconds.   |
| A.A.C. R18-2-805(B) | Failure to operate an asphalt or tar kettle while utilizing all emissions control measures listed in A.A.C. R18-2-805(B)(1) through (6) to minimize air contaminant emissions.  |
| A.R.S. § 49-432(B)  | Failure to make air contaminant monitoring devices available for inspection by ADEQ during all reasonable times.  |
| A.R.S. § 49-501(A)  | Causing, suffering, allowing, or permitting the unlawful ignition or maintaining of any open outdoor fire.  |



### **Hazardous Waste Violations Added to the Major List (L7)**

| <b>CITATION</b>  | <b>DESCRIPTION OF VIOLATION</b>  |
|--|--|
| 40 CFR § 261.5(f)(3) & (g)(3)<br>A.A.C. R18-8-261                    | CESQG failure to ensure hazardous waste is sent to a permitted or interim status hazardous waste facility, an ADEQ approved solid waste facility, a facility that beneficially recycles or treats prior to beneficially recycling, or a universal waste handler or destination facility. |
| A.A.C. R 18-8-262(M)   | Generator failure to keep written log of the inspections of container, tank drip pad and containment building areas and for the containers, tanks and other equipment located in these storage areas.  |
| 40 CFR § 262.34(a)(1)<br>A.A.C. R18-8-262<br>A.A.C. R 18-8-270(B)(1) | Storage of a hazardous waste without a permit by failing to comply with the 90-day exemption that requires weekly inspection for leaks and deterioration in areas where hazardous waste containers are stored.   |
| 40 CFR § 262.12(a)<br>A.A.C. R18-8-262<br>A.A.C. R 18-8-270(B)(1)    | Treatment storage or disposal without a permit by failing to obtain an EPA ID number.  |
| 40 CFR § 264.17<br>A.A.C. R18-8-262                                  | TSD failure to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste.   |
| 40 CFR § 264.112<br>A.A.C. R18-8-264                                 | Failure to have or amend a written closure plan for a hazardous waste facility.  |
| 40 CFR § 264.118<br>A.A.C. R18-8-264                                 | Failure to submit or amend post-closure plan.  |
| 40 CFR § 265.118<br>A.A.C. R18-8-265                                 | Failure to submit or amend post-closure plan.  |
| 40 CFR § 265.53<br>A.A.C. R18-8-265                                  | Failure to provide contingency plan to emergency response authorities.   |
| A.A.C. R 18-8-262(L)   | Generator failure to comply with 40 CFR § 265.17(a), which requires precautions be taken to prevent accidental ignition or reaction of ignitable or reactive wastes.   |

### **Hazardous Waste Violations Moved from Minor List (L8) to Major List (L7)**

| <b>CITATION</b>                             | <b>DESCRIPTION VIOLATION</b>   |
|---|--|
| 40 CFR § 263.20<br>A.A.C. R18-8-263         | Transporter acceptance of hazardous waste without proper manifest.   |
| 40 CFR § 264.71(a)(4)<br>A.A.C. R18-8-264   | Failure to send copy of manifest to generator upon receipt of hazardous waste.   |
| 40 CFR § 264.112<br>A.A.C. R18-8-264        | Failure to have or amend a written closure plan for a hazardous waste facility.  |
| 40 CFR § 264.113<br>A.A.C. R18-8-264        | Failure to close hazardous waste facility within time allowed.   |
| A.A.C. R18-8-265(H)                         | Interim status facility failure to submit an Annual Report to ADEQ.  |
| 40 CFR § 265.17(a)<br>A.A.C. R18-8-265      | Failure to conspicuously place “No Smoking” signs wherever there is a hazard from an ignitable or reactive waste.                  |
| 40 CFR § 265.37<br>A.A.C. R18-8-265         | Failure to attempt to make arrangements with local emergency response authorities.   |
| 40 CFR § 265.52<br>A.A.C. R18-8-265         | Contingency plan is inadequate.  |
| 40 CFR § 265.53<br>A.A.C. R18-8-265         | Failure to provide contingency plan to emergency response authorities.   |
| 40 CFR § 265.54<br>A.A.C. R18-8-265         | Failure to amend contingency plan.   |
| 40 CFR § 265.71(a)(1)<br>A.A.C. R18-8-265   | Failure to sign or date manifest upon receipt of hazardous waste.  |
| 40 CFR § 265.71(a)(4)<br>A.A.C. R18-8-265   | Failure to send copy of manifest to generator upon receipt of hazardous waste.   |
| 40 CFR § 265.71(b)(1)<br>A.A.C. R18-8-265   | Failure to sign or date manifest upon receipt of hazardous waste from rail or water.   |
| 40 CFR § 265.71(b)(5)<br>A.A.C. R18-8-265   | Failure to retain at the facility a copy of manifest for 3 years after receipt of hazardous waste from off-site via rail or water. |
| 40 CFR § 265.113<br>A.A.C. R18-8-265        | Failure to close facility within time allowed.   |
| 40 CFR § 265.118<br>A.A.C. R18-8-265        | Failure to submit or amend post-closure plan.  |
| 40 CFR § 268.7(a)(2)<br>A.A.C. R18-8-268    | Failure to send one-time statement that waste doesn’t meet treatment standard.   |
| 40 CFR § 268.7(a)(3)(i)<br>A.A.C. R18-8-268 | Failure to send on-time notice that waste does meet treatment standard.  |

| CITATION                                  | DESCRIPTION VIOLATION   |
|---|---|
| 40 CFR § 268.7(a)(6)<br>A.A.C. R18-8-268  | Failure to maintain documentation that waste is restricted.   |
| 40 CFR § 273.14<br>A.A.C. R18-8-273       | Small quantity handler failure to label/mark universal waste.   |
| 40 CFR § 273.34<br>A.A.C. R18-8-273       | Large quantity handler failure to label/mark universal waste.   |
| A.R.S. § 49-929                           | TSD, transporter, or generator, failure to register or pay annual registration fee.   |
| A.R.S. § 49-930                           | Hazardous waste recovery facility failure to register or pay annual registration fee.   |
| A.A.C. R18-8-262(I)                       | Generator failure to submit signed manifest for shipment of hazardous waste.  |
| 40 CFR § 262.40(c)<br>A.A.C. R18-8-262    | Failure to maintain records of hazardous waste determination for 3 years.   |
| A.A.C. R18-8-263(D)                       | Transporter failure to submit signed manifest for shipment of hazardous waste.  |
| 40 CFR § 263.20<br>A.A.C. R18-8-263       | Acceptance of hazardous waste for transport with an erroneous manifest.   |
| 40 CFR § 263.20(a)<br>A.A.C. R18-8-263    | Transporter acceptance of hazardous waste from a generator without a properly signed manifest.  |
| 40 CFR § 262.23<br>A.A.C. R18-8-262       | Use of erroneous manifest for shipment of hazardous waste.  |
| 40 CFR § 262.23<br>A.A.C. R18-8-262       | Use of erroneous manifest for shipment of hazardous waste.  |
| 40 CFR § 263.20(b)<br>A.A.C. R18-8-263    | Transporter failure to sign and date a manifest acknowledging acceptance of hazardous waste from the generator prior transporting.  |
| 40 CFR § 263.20(d)(1)<br>A.A.C. R18-8-263 | Transporter failure to obtain the date of delivery and signature of the next transporter, or of the owner or operator of the designated facility on the manifest.   |
| 40 CFR § 263.21<br>A.A.C. R18-8-263       | Transporter failure to deliver the entire quantity of hazardous waste either to the designated location on the manifest, or if not possible, pursuant to a manifest revision made by the transporter according to the generator's instructions. |
| A.A.C. R18-8-262(H)                       | Generator failure to submit an Annual Report to ADEQ.   |
| A.A.C. R18-8-264(H)                       | TSD failure to submit an Annual Report to ADEQ.   |
| 40 CFR § 265.17(a)<br>A.A.C. R18-8-265    | Failure to conspicuously place "No Smoking" signs wherever there is a hazard from an ignitable or reactive waste.   |
| 40 CFR § 262.20<br>A.A.C. R18-8-262       | Generator failure to properly prepare a hazardous waste manifest.   |

**Reuse of Reclaimed Water Violations Moved from Major List (L9) to Minor List (L10)**

| CITATION   | DESCRIPTION OF VIOLATION  |
|--|---|
| A.A.C. R18-9-713(C)(2)                           | Failure to ensure that the application rates of Class A reclaimed water are based on an assigned water allotment, water balance, or alternative ADEQ approved method.                           |
| A.A.C. R18-9-718(A)(3)<br>A.A.C. R18-9-713(C)(2) | Failure of a Reclaimed Water Agent to ensure that the application rates of Class A reclaimed water are based on an assigned water allotment, water balance, or alternative ADEQ approved method |

### **Water Pollution Control Violations Moved from Major List (L17) to Minor List (L18)**

| <b>CITATION</b>                            | <b>DESCRIPTION OF VIOLATION</b>  |
|--|--|
| A.R.S. § 49-252(E)                         | Failure to submit an aquifer protection permit application or a request for an aquifer protection permit modification following a director's request, in order to address closure activities.  |
| A.A.C. R18-9-A212(B)(1)                    | Failure to submit to ADEQ a written agreement between the existing and new aquifer protection permittee indicating a specific date for transfer of all aquifer protection permit responsibility, coverage, and liability.  |
| A.A.C. R18-9-A309(D)(2)                    | Failure to disconnect and remove electrical and mechanical components from a closed or abandoned on-site wastewater treatment facility.  |
| A.A.C. R18-9-A309(D)(3)                    | Failure to remove or collapse the top of any tank or containment structure associated with a closed or abandoned on-site wastewater treatment facility.  |
| A.A.C. R18-9-A309(D)(3)(a)                 | Failure to fill a tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material when closing or abandoning an on-site wastewater treatment facility.   |
| A.A.C. R18-9-A309(D)(4)                    | Failure to cut and plug both ends of an abandoned sewer drain pipe between the building and a closed or abandoned on-site wastewater treatment facility not more than five feet outside the building foundation if practical, or cut and plug as close to each end as possible a closed on-site wastewater treatment facility. |
| A.A.C. R18-9-A313(A)(2)                    | Failure to install components on a firm foundation that supports the components and operating loads.   |
| A.A.C. R18-9-A313(A)(6)                    | Failure to place backfill to prevent damage to geotextile, liner materials, tanks, or other components.  |
| A.A.C. R18-9-A313(B)(1)                    | Failure to inspect and clean pretreatment or wastewater distribution components.   |
| A.A.C. R18-9-A313(B)(3)                    | Failure to inspect and clean the effluent baffle screen and pump tank.   |
| A.A.C. R18-9-A313(B)(6)                    | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media.  |
| A.A.C. R18-9-A313(B)(8)                    | Failure to inspect and clean pump inlets or controls.  |
| A.A.C. R18-9-A313(B)(10)                   | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits  |
| A.A.C. R18-9-B301(B)(3)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.02 General Permit requirement that the test site be restored to its natural grade following a discharge from a hydrostatic test of a drinking water distribution system.   |
| A.A.C. R18-9-B301(C)(1)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.03 General Permit requirement that a discharge from a hydrostatic test of a pipeline previously use for transmission of fluid be contained in an impoundment with a flexible geomembrane material with a thickness of at least 10 mils.                |

| CITATION                                   | DESCRIPTION OF VIOLATION   |
|--|--|
| A.A.C. R18-9-B301(C)(2)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.0 General Permit requirement that liner material associated with a discharge from a hydrostatic test of a pipeline previously use for transmission of fluid be placed over at least three inches of well-sorted sand material. |
| A.A.C. R18-9-B301(C)(3)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.03 General Permit requirement that all water from a hydrostatic test of a pipeline previously use for transmission of fluid be removed from the impoundment within 60 days after the end of the test.                          |
| A.A.C. R18-9-B301(C)(4)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.03 General Permit requirement that the liner used for a hydrostatic test of a pipeline previously use for transmission of fluid be removed.  |
| A.A.C. R18-9-B301(C)(5)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.03 General Permit requirement that the site used for a hydrostatic test of a pipeline previously use for transmission of fluid be restored to its natural grade.   |
| A.A.C. R18-9-B301(G)(2)<br>A.R.S. § 49-241 | Discharge without an aquifer protection permit by failing to meet the 1.07 General Permit requirement that docks servicing watercraft have conveniently located toilet facilities for men and women  |
| A.A.C. R18-9-C301(C)(2)                    | Failure to clearly mark a drywell that drains an area where hazardous substances are used, stored, loaded or treated, with "Storm Water Only" on the surface grate or manhole cover  |
| A.A.C. R18-9-C301(E)                       | Failure to maintain a log book as part of the Best Management Practices Plan that documents maintenance, inspections, employee training, and sampling activities for a drywell that drains an area where hazardous substances are used, stored, loaded or treated                                      |
| A.A.C. R18-9-C302(C)(4)                    | Failure to visually inspect a stockpile at a mining site.  |
| A.A.C. R18-9-C303(C)(6)                    | Failure to ensure that a tracer does not leave the site in concentrations distinguishable from background water quality.   |
| A.A.C. R18-9-D301(A)(2)                    | Failure to ensure that inflow to a lined surface impoundment or lined secondary containment structure is from an approved source.  |
| A.A.C. R18-9-D301(D)(3)                    | Failure to perform and document a visual inspection for damage to the liner material and for accumulation of residual material at least monthly  |
| A.A.C. R18-9-D301(D)(5)                    | Failure to remove all inflow from an impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.   |
| A.A.C. R18-9-D301(E)(5)                    | Failure to maintain construction Quality Assurance/Quality Control program documentation associated with an impoundment for 10 years   |
| A.A.C. R18-9-D301(G)(2)                    | Failure to inspect liner material for evidence of holes, tears, or defective seams that could have leaked within 90 days following a closure notification for a surface impoundment.   |
| A.A.C. R18-9-D302(E)(1)                    | Failure to maintain construction or as-built drawings associated with process water discharges from a water treatment facility for 10 years  |

| CITATION                | DESCRIPTION OF VIOLATION  |
|-------------------------|---|
| A.A.C. R18-9-D302(E)(3) | Failure to maintain water quality data associated with process water discharges from a water treatment facility for 10 years  |
| A.A.C. R18-9-D302(E)(5) | Failure to maintain records of an unpermitted discharge associated with process water discharges from a water treatment facility for 10 years.  |
| A.A.C. R18-9-D303(D)(1) | Failure to inspect an oil/water separator at a vehicle or equipment wash facility before operation to ensure that there are no leaks and that the oil/water separator is in operable condition.   |
| A.A.C. R18-9-D303(D)(2) | Failure to adequately inspect an entire vehicle or equipment wash facility at least quarterly.  |
| A.A.C. R18-9-D303(D)(3) | Failure to visually inspect each surface impoundment at least monthly, to ensure the volume of vehicle or equipment wash water is maintained within the design capacity and freeboard limitation  |
| A.A.C. R18-9-D303(D)(4) | Failure to repair damage to the integrity of a vehicle or equipment wash pad or impoundment liner as soon as practical.   |
| A.A.C. R18-9-D303(D)(5) | Failure to maintain the oil/water separator at a vehicle or equipment wash facility to achieve the operational performance of the separator.  |
| A.A.C. R18-9-D303(E)(1) | Failure to monitor vehicle or equipment wash water quarterly at the point of discharge for pH and for the presence of C10 through C32 hydrocarbons when the washwater is discharged to an unlined surface impoundment or other area for subsurface disposal.      |
| A.A.C. R18-9-D303(E)(2) | Failure to submit a report to ADEQ with a proposal for mitigation when the concentration of C10 through C32 hydrocarbons in vehicle or equipment wash water discharged to an unlined surface impoundment or other area for subsurface disposal exceeded 50 mg/l.  |
| A.A.C. R18-9-D303(E)(2) | Failure to increase the monitoring frequency to monthly when the pH of vehicle or equipment wash water discharged to an unlined surface impoundment or other area for subsurface disposal was not between 6.0 and 9.0.  |
| A.A.C. R18-9-D303(E)(2) | Failure to increase the monitoring frequency to monthly when the concentration of C10 through C32 hydrocarbons in vehicle or equipment wash water discharged to an unlined surface impoundment or other area for subsurface disposal exceeded 50 mg/l.            |
| A.A.C. R18-9-D303(F)(2) | Failure to maintain a log book or similar documentation associated with the surface impoundments for a vehicle or equipment wash facility to record inspection results, repair and maintenance activities, monitoring results, and facility closure for 10 years. |
| A.A.C. R18-9-D303(G)    | Failure to inspect liner material for evidence of holes, tears, or defective seams that could have leaked within 90 days following a closure notification for a surface impoundment associated with a vehicle or equipment wash facility.                         |
| A.A.C. R18-9-D303(G)    | Failure to remove a liner in an area of suspected leakage and sample potentially impacted soil within 90 days following a closure notification for a surface impoundment associated with a vehicle or equipment wash facility.                                    |

| CITATION  | DESCRIPTION OF VIOLATION   |
|---|--|
| A.A.C. R18-9-D304(C)(4)                         | Failure to implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines for a non-storm water impoundment at a mining site.   |
| A.A.C. R18-9-D304(D)(2)                         | Failure to remove accumulated residues, sediments, debris, or vegetation in a non-storm water impoundment at a mining site.  |
| A.A.C. R18-9-D304(D)(3)                         | Document a visual inspection of a non-storm water impoundment at a mining site for cracks, tears, perforations and residual build-up at least monthly.   |
| A.A.C. R18-9-D304(E)(2)                         | Failure to maintain a log book or similar documentation for a non-storm water impoundment at a mining site to record inspection results, repair and maintenance activities, monitoring results, and facility closure for 10 years. |
| A.A.C. R18-9-D304(G)(2)                         | Failure to inspect liner material for evidence of holes, tears, or defective seams that could have leaked within 90 days following a closure notification for a non-storm water impoundment at a mining site                       |
| A.A.C. R18-9-D305(D)(3)                         | Failure to perform a quarterly inspection of a disposal wetland to review bank integrity, erosion evidence, the condition of signage and vegetation  |
| A.A.C. R18-9-D304(F)(1)                         | Failure to submit a report to ADEQ within five days of discovering a liner breach in non-storm water impoundment at a mining site as evidenced by a drop in water level not attributable to evaporation.                           |
| A.A.C. R18-9-D304(F)(1)                         | Failure to submit a report to ADEQ within five days of discovering a breach in a non-storm water impoundment at a mining site  |
| A.A.C. R18-9-D307(D)(2)                         | Failure to monitor wastewater leaving a tertiary treatment wetland to ensure that discharge water quality meets the intended treatment.  |
| A.A.C. R18-9-D307(D)(4)                         | Failure to inspect a tertiary treatment wetland at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation.  |
| A.A.C. R18-9-D307(E)(2)                         | Failure to maintain a log book or similar documentation for a tertiary treatment wetland to record inspection results, repair and maintenance activities, monitoring results, and facility closure for 10 years                    |
| A.A.C. R18-9-E303(F)(9)                         | Failure to inspect all mechanical components of a composting toilet to verify that the mechanical components are operating after an extended period of non-use   |
| A.A.C. R18-9-E304(G)<br>A.A.C. R18-9-A313(B)(1) | Failure to inspect and clean pretreatment or wastewater distribution components for a pressure distribution system.  |
| A.A.C. R18-9-E304(G)<br>A.A.C. R18-9-A313(B)(3) | Failure to inspect and clean the effluent baffle screen and pump tank for a pressure distribution system.  |
| A.A.C. R18-9-E304(G)<br>A.A.C. R18-9-A313(B)(6) | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a pressure distribution system.   |



| CITATION   | DESCRIPTION OF VIOLATION  |
|--|---|
| A.A.C. R18-9-E304(G)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a pressure distribution system  |
| A.A.C. R18-9-E304(G)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a pressure distribution system. |
| A.A.C. R18-9-E305(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a gravelless trench.  |
| A.A.C. R18-9-E305(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a gravelless trench.  |
| A.A.C. R18-9-E305(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a gravelless trench.   |
| A.A.C. R18-9-E305(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a gravelless trench.  |
| A.A.C. R18-9-E305(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a gravelless trench.            |
| A.A.C. R18-9-E305(F)                             | Failure to inspect the finished grade in the vicinity of the gravelless disposal field for maintenance of proper drainage and protection from damaging loads.     |
| A.A.C. R18-9-E306(C)(1)                          | Failure to ensure that a natural seal evapotranspiration bed minimizes discharge to the native soil through the natural seal liner.                               |
| A.A.C. R18-9-E306(C)(3)                          | Failure to ensure that a natural seal evapotranspiration bed prevents ponding of wastewater on the bed surface  |
| A.A.C. R18-9-E307(C)(1)                          | Failure to ensure that a lined evapotranspiration bed prevents discharge to the native soil through the use of a synthetic liner.                                 |
| A.A.C. R18-9-E307(C)(2)                          | Ponding or seepage caused by a failure to ensure that a lined evapotranspiration bed attains full disposal of wastewater to the atmosphere by evapotranspiration. |
| A.A.C. R18-9-E307(C)(3)                          | Failure to ensure that a lined evapotranspiration bed prevents ponding of wastewater on the bed surface.  |
| A.A.C. R18-9-E307(H)(1)                          | Irrigation of an evapotranspiration bed.  |
| A.A.C. R18-9-E308(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a Wisconsin mound   |
| A.A.C. R18-9-E308(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a Wisconsin mound   |
| A.A.C. R18-9-E308(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a Wisconsin mound  |
| A.A.C. R18-9-E308(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a Wisconsin mound.  |

| CITATION   | DESCRIPTION OF VIOLATION  |
|--|---|
| A.A.C. R18-9-E308(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a Wisconsin mound.                          |
| A.A.C. R18-9-E311(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a peat filter.                              |
| A.A.C. R18-9-E311(F)                             | Failure to inspect the finished grade over a peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system.        |
| A.A.C. R18-9-E312(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a textile filter.   |
| A.A.C. R18-9-E312(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a textile filter.   |
| A.A.C. R18-9-E312(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a textile filter.  |
| A.A.C. R18-9-E312(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a textile filter.   |
| A.A.C. R18-9-E312(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a textile filter.                           |
| A.A.C. R18-9-E315(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for an aerobic system with subsurface disposal.   |
| A.A.C. R18-9-E315(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for an aerobic system with subsurface disposal.   |
| A.A.C. R18-9-E315(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for an aerobic system with subsurface disposal                                     |
| A.A.C. R18-9-E315(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for an aerobic system with subsurface disposal.   |
| A.A.C. R18-9-E315(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for an aerobic system with subsurface disposal. |
| A.A.C. R18-9-E317(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a cap system.   |
| A.A.C. R18-9-E317(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a cap system.   |
| A.A.C. R18-9-E317(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a cap system.  |
| A.A.C. R18-9-E317(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a cap system.   |
| A.A.C. R18-9-E317(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a cap system.                               |

| CITATION   | DESCRIPTION OF VIOLATION  |
|--|---|
| A.A.C. R18-9-E317(F)                             | Failure to inspect a cap fill or other surface features.  |
| A.A.C. R18-9-E319(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a sand lined trench system.   |
| A.A.C. R18-9-E319(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a sand lined trench system.   |
| A.A.C. R18-9-E319(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a sand lined trench system.  |
| A.A.C. R18-9-E319(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a sand lined trench system.   |
| A.A.C. R18-9-E319(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a sand lined trench system.                   |
| A.A.C. R18-9-E319(F)(1)                          | Failure to ensure that the septic tank filter and pump tank are inspected for a sand lined trench system.   |
| A.A.C. R18-9-E320(D)(2)                          | Failure to incorporate of a fail-safe mechanism to prevent inadequately treated wastewater from being discharged.   |
| A.A.C. R18-9-E322(F)<br>A.A.C. R18-9-A313(B)(1)  | Failure to inspect and clean pretreatment or wastewater distribution components for a subsurface drip irrigation disposal system.   |
| A.A.C. R18-9-E322(F)<br>A.A.C. R18-9-A313(B)(3)  | Failure to inspect and clean the effluent baffle screen and pump tank for a subsurface drip irrigation disposal system.   |
| A.A.C. R18-9-E322(F)<br>A.A.C. R18-9-A313(B)(6)  | Failure to inspect, remove and replace, if necessary, and properly dispose of filter media for a subsurface drip irrigation disposal system.                                    |
| A.A.C. R18-9-E322(F)<br>A.A.C. R18-9-A313(B)(8)  | Failure to inspect and clean pump inlets and controls for a subsurface drip irrigation disposal system.   |
| A.A.C. R18-9-E322(F)<br>A.A.C. R18-9-A313(B)(10) | Failure to inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for a subsurface drip irrigation disposal system. |

### **Water Pollution Control Violations Moved from Minor List (L18) to Major List (L17)**

| <b>CITATION</b>            | <b>DESCRIPTION OF VIOLATION</b>  |
|----------------------------|--|
| A.A.C. R18-9-104(B)        | Failure to submit an application for an Aquifer Protection Permit or a closure plan within 90 days from the date of ADEQ's notification  |
| A.A.C. R18-9-A206(B)(1)    | Failure to make a complete monitoring record for each sample taken as required by an individual aquifer protection permit  |
| A.A.C. R18-9-A209(A)(2)    | Failure to implement a measure specified in an individual aquifer protection permit for temporary cessation  |
| A.A.C. R18-9-A309(A)(8)(e) | Failure to operate an on-site wastewater treatment facility so that the flow to the facility does not exceed the design flow specified in the Verification of General Permit Conformance.  |
| A.A.C. R18-9-A316(A)       | Performing a transfer inspection for an on-site wastewater treatment facility without working knowledge of the facility.   |
| A.A.C. R18-9-C303(C)(3)    | Addition of a tracer substance to a well that is not compatible with its construction.   |
| A.A.C. R18-9-D301(E)(2)    | Failure to make a log book or similar documentation associated with an impoundment to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request.   |
| A.A.C. R18-9-D302(D)(1)(c) | Failure to submit an application for an individual aquifer protection permit when the concentration of a pollutant exceeded the numeric limit for an inorganic chemical, organic chemical, or pesticide in a filtration backwash discharge for three quarters.                 |
| A.A.C. R18-9-D302(D)(2)(c) | Failure to submit an application for an individual aquifer protection permit when the concentration of a pollutant exceeded the numeric limit for a microbiological contaminant in a filtration backwash discharge for four months   |
| A.A.C. R18-9-D302(E)(2)    | Failure to make a log book or similar documentation associated with process water discharges from a water treatment facility to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request.         |
| A.A.C. R18-9-D302(E)(3)    | Failure to make water quality data associated with process water discharges from a water treatment facility available to ADEQ upon request.  |
| A.A.C. R18-9-D303(F)(2)    | Failure to make a log book or similar documentation associated with the surface impoundments for a vehicle or equipment wash facility to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request |
| A.A.C. R18-9-D303(F)(3)    | Failure to maintain Material Safety Data Sheets for the chemicals used in vehicle or equipment wash operations for 10 years.   |
| A.A.C. R18-9-D303(F)(3)    | Failure to make a required monitoring result associated with the surface impoundments for a vehicle or equipment wash facility available to ADEQ upon request  |
| A.A.C. R18-9-D303(G)       | Failure to notify ADEQ and submit an action plan for ADEQ's approval within 60 days when soil remediation levels have been exceeded at a vehicle or equipment wash facility.   |

| CITATION                | DESCRIPTION OF VIOLATION   |
|-------------------------|--|
| A.A.C. R18-9-D304(E)(1) | Failure to make construction or as-built drawings for a non-storm water impoundment at a mining site available to ADEQ upon request.   |
| A.A.C. R18-9-D304(E)(2) | Failure to make a log book or similar documentation for a non-storm water impoundment at a mining site to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request. |
| A.A.C. R18-9-D304(E)(6) | Failure to make records of an unauthorized inflow into a non-storm water impoundment at a mining site available to ADEQ upon request.  |
| A.A.C. R18-9-D305(D)(3) | Failure to correct a problem noted during a quarterly inspection of a disposal wetland.  |
| A.A.C. R18-9-D305(E)(2) | Failure to make a log book or similar documentation for a disposal wetland to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request.                             |
| A.A.C. R18-9-D306(E)(2) | Failure to make a log book or similar documentation for a wetland to treat acid rock drainage to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request.          |
| A.A.C. R18-9-D307(E)(2) | Failure to make a log book or similar documentation for a tertiary treatment wetland to record inspection results, repair and maintenance activities, monitoring results, and facility closure available to ADEQ upon request.                   |

### **Solid Waste Violations Added to the Minor Violation List (L12)\***

| <b>CITATION</b>           | <b>DESCRIPTION OF VIOLATION</b>   |
|---------------------------|---|
| A.A.C. R18-9-A208(A)      | Failure to follow a compliance schedule established in an individual aquifer protection permit.   |
| A.A.C. R18-13-1307(E)     | Storage by a generator of shredder residue for longer than 90 days.   |
| A.R.S. § 44-1304.01(A)(1) | Storage of 100 or more used motor vehicle tires outdoors in a fashion that exceeds twenty feet in height.   |
| A.R.S. § 44-1304.01(A)(2) | Storage of used motor vehicle tires outdoors in a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile.   |
| A.R.S. § 44-1304.01(A)(2) | Storage of used motor vehicle tires outdoors in a manner that does not provide access routes between and around tire piles that are at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials.                            |
| A.R.S. § 44-1304.01(A)(2) | Storage of used motor vehicle tires outdoors in a grid system that exceeds fifty feet by one hundred fifty feet.  |
| A.R.S. § 44-1304.01(A)(3) | Storage of used motor vehicle tires outdoors within three feet of any property line.  |
| A.R.S. § 44-1304.01(A)(4) | Storage of used motor vehicle tires outdoors in a fashion that exceeds six feet in height if the used tires are stored between three and ten feet of any property line.   |
| A.R.S. § 44-1304.01(A)(5) | Storage of used motor vehicle tires outdoors within fifty feet of any area in which smoking of tobacco or any other substance is permitted.   |
| A.R.S. § 44-1304.01(A)(6) | Storage of used motor vehicle tires outdoors in an area in which electrical wiring, fixtures or appliances do not comply with the national electrical code.   |
| A.R.S. § 44-1304.01(A)(7) | Storage of used motor vehicle tires without placing class “2A-10BC” type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet. |
| A.R.S. 49-762.07(F)(1)    | Failure of the owner or operator of a solid waste facility other than a solid waste landfill to operate a facility in manner that controls wind dispersion and other surface dispersion of solid waste from the facility.   |
| A.R.S. 49-762.07(F)(1)    | Failure of the operator of a solid waste facility other than a solid waste landfill to collect solid waste that is dispersed beyond the boundaries of the solid waste facility on a regular basis.  |
| A.R.S. 49-762.07(F)(3)    | Failure of the owner or operator of a solid waste facility other than a solid waste landfill to operate a facility in manner that controls vector breeding and fire hazards.  |

\*These violations were also added to the Major List (L11) with a different violation description to distinguish between those violations with the same citation.

**Solid Waste Violations Moved from Major List (L11) to Minor List (L12)\***

| <b>CITATION</b>                        | <b>DESCRIPTION VIOLATION</b>   |
|--|--|
| A.A.C. R18-8-1602(B)(4)                | Failure to complete a treatability study and remove Petroleum Contaminated Soils within 1 year from the commencement of the study.   |
| A.A.C. R18-8-1611(F)(2)                | Failure to inspect Petroleum Contaminated Soil storage piles on a weekly basis.  |
| A.A.C. R18-8-1607(D)*                  | Following completion of construction of a Petroleum Contaminated Soil treatment, storage, or disposal facility, placement of Petroleum Contaminated Soil on the site without first submitting a construction certification report, including as-built plans indicating any changes to the design or operational plans of the facility to ADEQ. |
| A.A.C. R18-8-1609(A)(3)*               | Failure to provide the results of post treatment sampling of Petroleum Contaminated Soils to the Department within 45 days of completion of the treatment.   |
| A.A.C. R18-13-1307(A)*                 | Failure of a generator of shredder residue to follow the protocol for the sampling and analysis of shredded motor vehicles.  |
| A.A.C. R18-13-1307(G)*                 | Failure to transport nonhazardous shredder residue in accordance with the requirements for transportation of garbage as set forth in A.A.C. R18-8-510.   |
| A.A.C. R18-13-1408(C)(3)*              | Failure to keep a biohazardous medical waste storage area free of visible contamination.   |
| A.A.C. R18-13-1409(E)*                 | Use of a vehicle to transport biohazardous waste that does not meet the applicable leak-proof construction requirements.   |
| A.A.C. R18-13-1409(G)(3)*              | Failure to deliver biohazardous medical waste to an ADEQ approved biohazardous medical waste facility within 24 hours of collection.   |
| A.A.C. R18-13-1411(8)*                 | Failure to clean a biohazardous medical waste storage area daily.  |
| 40 CFR § 279.55*<br>A.R.S. § 49-802(A) | Failure of the owner or operator of a used oil processing/re-refining facility to develop and follow a written analysis plan.  |

\*These violations now appear on both the Major List and Minor List with differing violation descriptions to distinguish between those violations with the same citation.

### **Solid Waste Violations Added to the Major Violations List (L11)**

| <b>CITATION</b>            | <b>DESCRIPTION OF VIOLATION</b>  |
|----------------------------|--|
| A.A.C. R18-9-A208(A)*      | Failure to follow a compliance schedule established in an individual aquifer protection permit in a manner that creates a risk to public health or the environment.  |
| A.A.C. R18-13-1307(E)*     | Storage by a generator of shredder residue for longer than 90 days in a manner that creates a risk to public health or the environment.  |
| A.R.S. § 44-1304.01(A)(1)* | Creation of a risk to public health or the environment by storing 100 or more used motor vehicle tires outdoors in a fashion that exceeds twenty feet in height.   |
| A.R.S. § 44-1304.01(A)(2)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors in a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile.   |
| A.R.S. § 44-1304.01(A)(2)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors in a manner that does not provide access routes between and around tire piles that are at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials.                            |
| A.R.S. § 44-1304.01(A)(2)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors in a grid system that exceeds fifty feet by one hundred fifty feet.  |
| A.R.S. § 44-1304.01(A)(3)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors within three feet of any property line.  |
| A.R.S. § 44-1304.01(A)(4)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors in a fashion that exceeds six feet in height if the used tires are stored between three and ten feet of any property line.   |
| A.R.S. § 44-1304.01(A)(5)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors within fifty feet of any area in which smoking of tobacco or any other substance is permitted.   |
| A.R.S. § 44-1304.01(A)(6)* | Creation of a risk to public health or the environment by storing used motor vehicle tires outdoors in an area in which electrical wiring, fixtures or appliances do not comply with the national electrical code.   |
| A.R.S. § 44-1304.01(A)(7)* | Creation of a risk to public health or the environment by storing used motor vehicle tires without placing class “2A-10BC” type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet. |
| A.A.C. R18-8-1611(B)*      | Storage of PCS in a manner that allows commingling with treated soils.   |



| CITATION                | DESCRIPTION OF VIOLATION  |
|-------------------------|---|
| A.R.S. 49-762.07(F)(1)* | Creation of a risk to human health or the environment by failure of the operator of a solid waste facility other than a solid waste landfill to collect solid waste that is dispersed beyond the boundaries of the solid waste facility on a regular basis.                         |
| A.R.S. 49-762.07(F)(1)* | Creation of a risk to human health and the environment by failure of the owner or operator of a solid waste facility other than a solid waste landfill to operate a facility in manner that controls wind dispersion and other surface dispersion of solid waste from the facility. |
| A.R.S. 49-762.07(F)(2)  | Failure of owner or operator of a solid waste facility other than solid waste landfills to operate a facility in manner that does not discharge hazardous substances to surface water, groundwater, or subsurface soil.   |
| A.R.S. 49-762.07(F)(3)* | Creation of a risk to human health or the environment by failure of the owner or operator of a solid waste facility other than a solid waste landfill to operate a facility in manner that controls vector breeding and fire hazards.   |
| A.R.S. 49-762.07(F)(4)  | Failure of the owner or operator of a solid waste facility other than a solid waste landfill to operate a facility in manner that utilizes reasonable measures to control public access to medical waste generated by health care facilities or special waste.                      |

\* These violations were also added to the Minor List (L12) with a different violation description to distinguish between those violations with the same citation.

**UST Inspections & Compliance Violations Added to Minor Violations List (L14)**

| <b>CITATION</b>            | <b>DESCRIPTION OF VIOLATION</b>   |
|----------------------------|---|
| A.A.C. R18-12-301(A) & (D) | Failure to submit evidence demonstrating compliance with Financial Responsibility.  |
| A.A.C. R18-12-303(A) & (H) | Failure to adequately provide Financial Responsibility for taking corrective actions and for addressing 3 <sup>rd</sup> party liability actions.  |
| A.A.C. R18-320(A)(1)       | Failure to submit documented evidence of Financial Responsibility within 30 days after identifying a UST release.   |
| A.A.C. R18-320(A)(2)       | Failure to obtain alternative coverage within 30 days after receiving notice of voluntary / involuntary bankruptcy (Title 11); or notice of suspension or revocation of the authority for the Financial Responsibility (FR) provider to issue a FR mechanism. |
| A.A.C. R18-12-501          | Failure to pay annual tank fees of \$100 per tank before March 15 each year.  |
| A.A.C. R18-12-801          | Failure to perform or supervise tank service on a UST by a person certified by the Department.  |
| A.A.C. R18-12-808          | Failure to determine if work already completed complies with UST standards, if the Department stopped work because the work was not performed or supervised by a certified tank service provider.   |

**UST Inspections & Compliance Violations Moved from Major List (L13) to Minor List (L14)**

| <b>CITATION</b>         | <b>DESCRIPTION OF VIOLATION</b>   |
|-------------------------|---|
| A.A.C. R18-12-222(A)    | Failure to provide ADEQ with required information about a UST system.   |
| A.A.C. R18-12-232       | Failure to use a UST system made of or lined with materials that are compatible with the substance stored   |
| A.A.C. R18-12-240(D)    | Failure to close a UST system for which a method of release detection cannot be applied   |
| A.A.C. R18-12-270(E)    | Failure to bring a temporarily closed UST system back into service, permanently close the system, or request a extension for temporary closure within 12 months from the date the system went into temporary closure.                 |
| A.A.C. R18-12-271(C)(1) | Failure to develop documented evidence that the contents of the system are a regulated substance when permanently closing or making a change-in-service to a UST system.  |
| A.A.C. R18-12-271(C)(2) | Failure to drain and flush back into the tank regulated substances from piping and any other ancillary equipment that routinely contains regulated substances when permanently closing or making a change-in-service to a UST system. |
| A.A.C. R18-12-271(C)(2) | Failure to cap and remove all piping, dispensers, and other ancillary equipment to be closed when permanently closing or making a change-in-service to a UST system.  |
| A.A.C. R18-12-271(C)(3) | Failure to properly empty and clean the UST by removing all liquids and accumulated residues when permanently closing or making a change-in-service to a UST system.  |
| A.A.C. R18-12-271(C)(4) | Failure to remove from the ground or fill completely with inert solid materials all tanks when permanently closing a UST system.  |
| A.A.C. R18-12-271(C)(5) | Failure to notify ADEQ prior performing a site assessment when permanently closing or making a change-in-service to a UST system.   |

## **TABLE OF APPENDICES**

| <b>#</b> | <b>Document Description</b>   | <b>Type</b> | <b>Updated</b> | <b>Chapter(s)</b> |
|----------|---|-------------|----------------|-------------------|
| B1       | Action Update Notification  | Boilerplate | 7/1/02         | 1, 3, 15          |
| B2       | Compliance Order with Civil Administrative Penalty                    | Boilerplate | 7/1/02         | 6                 |
| B3       | Case Development Memorandum for Filing a Civil Complaint              | Boilerplate | 12/1/03        | 6, 7              |
| B4       | Case Development Memorandum for Negotiating a Civil Settlement        | Boilerplate | 12/1/03        | 7                 |
| B5       | Caution Letter  | Boilerplate | 7/1/02         | 5                 |
| B6       | Order Assessing a Civil Penalty                                       | Boilerplate | 7/1/02         | 6, 7              |
| B7       | Complaint Receipt Form  | Boilerplate | 1/14/02        | 2                 |
| B8       | Compliance/Abatement Order  | Boilerplate | 7/1/02         | 6                 |
| B9       | Compliance Status Letter  | Boilerplate | 7/1/02         | 5                 |
| B10      | Consent Order   | Boilerplate | 12/1/03        | 6                 |
| B11      | Criminal Information Transmittal Memorandum                           | Boilerplate | 12/1/03        | 6                 |
| B12      | License Revocation  | Boilerplate | 7/1/02         | 6                 |
| B13      | License Suspension  | Boilerplate | 7/1/02         | 6                 |
| B14      | Notice of Opportunity to Correct Closure Letter                       | Boilerplate | 7/1/02         | 3, 5, 7           |
| B15      | Notice of Opportunity to Correct Deficiencies                         | Boilerplate | 9/9/03         | 3, 5, 7           |
| B16      | Notice of Violation (Water Quality Permit Self-Monitoring Violations) | Boilerplate | 9/9/03         | 5, 7              |
| B17      | Notice of Violation (Significant and Other Violations)                | Boilerplate | 9/9/03         | 3, 5, 7           |

| #   | Document Description   | Type        | Updated | Chapter(s) |
|-----|--|-------------|---------|------------|
| B18 | Notice of Violation (Significant Violations Only)  | Boilerplate | 9/9/03  | 3, 5, 7    |
| B19 | Notice of Violation Closure Letter (With No Further Action)  | Boilerplate | 7/1/02  | 3, 5, 7    |
| B20 | Compliance Documented Letter (Reserving Further Action)  | Boilerplate | 12/1/03 | 3, 5, 7    |
| B21 | Notice of Violation Cover Letter Language  | Boilerplate | 9/9/03  | 3, 5, 7    |
| B22 | Notice of Violation Reminder Letter  | Boilerplate | 9/9/03  | 7          |
| B23 | Notification of Inspection Rights Form   | Boilerplate | 12/1/03 | 3          |
| B24 | Request for Assignment of an Assistant Attorney General  | Boilerplate | 12/1/03 | 6, 7       |
| B25 | Termination of Administrative Order  | Boilerplate | 7/1/02  | 6, 7       |
| B26 | Administrative Order Notice of Violation Cover Letter Language   | Boilerplate | 1/14/02 | 3, 5, 7    |
| B27 | UST Corrective Action Compliance Documented Letter (Reserving Further Action)                                    | Boilerplate | 12/1/03 | 14         |
| B28 | UST Corrective Action Section Consent Order Notice of Violation Cover Letter Language                            | Boilerplate | 1/14/02 | 14         |
| B29 | Administrative Decision Finding Violation of Consent Order and Withholding Payment from the State Assurance Fund | Boilerplate | 7/1/02  | 14         |
| B30 | Incident/Spill Report Form   | Boilerplate | 7/1/02  | 15         |
| B31 | Spill Notice of Violation Cover Letter Language  | Boilerplate | 7/1/02  | 15         |
| B32 | Voluntary Remediation Program Description  | Boilerplate | 7/1/02  | 15         |
| B33 | Compliance Documented Letter (for Participation in the Voluntary Remediation Program)                            | Boilerplate | 12/1/03 | 15         |

| #   | Document Description   | Type             | Updated  | Chapter(s) |
|-----|--|------------------|----------|------------|
| B34 | Notice of Violation (Water Quality Permit Failure to Submit a Self-Monitoring Report Form) | Boilerplate      | 9/9/03   | 7          |
| B35 | Consent Order with Civil Administrative Penalty  | Boilerplate      | 12/1/03  | 6          |
| B36 | Notice of Environmental Nuisance   | Boilerplate      | 9/9/03   | 5          |
| B37 | Notice of Environmental Nuisance Cover Letter Language                                     | Boilerplate      | 9/9/03   | 5          |
| B38 | Notice of Environmental Nuisance Closure Letter  | Boilerplate      | 9/9/03   | 5          |
| B39 | Enforcement Action/Settlement Approval Form  | Boilerplate      | 9/2/03   | 7, 9       |
| G1  | Consent Order Negotiation Guidelines   | Guidance         | 8/7/01   | 6          |
| G2  | Hazardous Waste Administrative Penalty Guidelines  | Guidance         | 10/26/00 | 6, 8       |
| G3  | UST Corrective Action Section Addendum to Consent Order Negotiation Guidelines             | Guidance         | 7/1/02   | 14         |
| L1  | Air Quality Major Violations List  | Major/Minor List | 5/5/03   | 4, 7       |
| L2  | Air Quality Minor Violations List  | Major/Minor List | 5/5/03   | 4, 7       |
| L3  | Asbestos NESHAP Major Violations List  | Major/Minor List | 1/14/02  | 4, 7       |
| L4  | Drinking Water Major Monitoring and Reporting Violations List                              | Major/Minor List | 1/14/02  | 4, 7       |
| L5  | Drinking Water Major Violations List   | Major/Minor List | 1/14/02  | 4, 7       |
| L6  | Drinking Water Minor Violations List   | Major/Minor List | 1/14/02  | 4, 7       |
| L7  | Hazardous Waste Major Violations List  | Major/Minor List | 4/1/03   | 4, 7       |
| L8  | Hazardous Waste Minor Violations List  | Major/Minor List | 4/1/03   | 4, 7       |

| #   | Document Description                                | Type             | Updated | Chapter(s) |
|-----|---|------------------|---------|------------|
| L9  | Reuse of Reclaimed Water Major Violations List      | Major/Minor List | 1/14/02 | 4, 7       |
| L10 | Reuse of Reclaimed Water Minor Violations List      | Major/Minor List | 1/14/02 | 4, 7       |
| L11 | Solid Waste Major List                              | Major/Minor List | 6/4/03  | 4, 7       |
| L12 | Solid Waste Minor List                              | Major/Minor List | 5/19/03 | 4, 7       |
| L13 | UST Inspections & Compliance Major Violations List  | Major/Minor List | 7/1/02  | 4, 7       |
| L14 | UST Inspections & Compliance Minor Violations List  | Major/Minor List | 7/1/02  | 4, 7       |
| L15 | Vehicle Emission Inspections Major List             | Major/Minor List | 4/10/03 | 4, 7       |
| L16 | Vehicle Emission Inspections Minor List             | Major/Minor List | 4/10/03 | 4, 7       |
| L17 | Water Pollution Control Major Violations List       | Major/Minor List | 1/14/02 | 4, 7       |
| L18 | Water Pollution Control Minor Violations List       | Major/Minor List | 7/1/02  | 4, 7       |
| L19 | Water Quality Permit Caution Level Violations List  | Major/Minor List | 7/18/01 | 4, 5, 7    |
| L20 | Water Quality Permit Major Violations List          | Major/Minor List | 7/18/01 | 4, 7       |
| L21 | LUST Enforcement Major Violations List              | Major/Minor List | 1/14/02 | 4, 7       |
| L22 | Biosolids Minor Violations List                     | Major/Minor List | 9/9/03  | 4, 7       |
| L23 | Biosolids Major Violations List                     | Major/Minor List | 9/9/03  | 4, 7       |
| M1  | Agency Activities Exempt from Inspection Procedures | Miscellaneous    | 7/31/98 | 1, 3       |
| M2  | Enforcement Authorities Table                       | Miscellaneous    | 7/1/02  | 6          |
| M3  | <i>Gregory v. Fox</i> Consent Decree                | Miscellaneous    | 12/2/93 | 1          |

| #   | Document Description   | Type          | Updated  | Chapter(s) |
|-----|--|---------------|----------|------------|
| M4  | <i>Gregory v. Schafer</i> Consent Decree                                       | Miscellaneous | 3/13/00  | 11         |
| M5  | Inspection Authorities Table   | Miscellaneous | 7/1/02   | 3          |
| M6  | Opportunity to Correct Implementation Letter                                   | Miscellaneous | 2/7/00   | 11         |
| M7  | Potential Arizona Legal Authorities/Violations Associated with Spills          | Miscellaneous | 7/1/02   | 15         |
| M8  | Summary of Enforcement Approval Procedures - Phoenix Office                    | Miscellaneous | 12/1/03  | 9          |
| M9  | Summary of Enforcement Approval Procedures - Regional Offices                  | Miscellaneous | 12/1/03  | 9          |
| P1  | Administrative Hearing Procedures for Delegated Programs Policy                | Policy        | 5/9/97   | 6          |
| P2  | Civil Penalty Policy   | Policy        | 8/4/94   | 8          |
| P3  | Compliance and Enforcement Policy  | Policy        | 5/11/00  | 11         |
| P4  | Drinking Water Section Application of Penalty Policy                           | Policy        | 11/30/95 | 8          |
| P5  | Intake Procedures for Taking Complaints Alleging Violations of Rule or Statute | Policy        | 5/11/00  | 2          |
| P6  | Criminal Information Transmittal Policy  | Policy        | 2/9/96   | 6, 9       |
| P7  | RCRA Civil Penalty Policy  | Policy        | 5/30/98  | 8          |
| P8  | Inspection Procedures Policy   | Policy        | 7/31/98  | 3          |
| P9  | Site Access Policy   | Policy        | 3/3/97   | 3          |
| P10 | Enforcement Waiver Policy (Small Business)                                     | Policy        | 5/1/98   | 11         |
| P11 | Notification Policy For Local Governmental Agencies                            | Policy        | 4/24/98  | 7          |



| #   | Document Description   | Type   | Updated  | Chapter(s) |
|-----|--|--------|----------|------------|
| P12 | Drinking Water Program Sanitary Survey Policy                  | Policy | 1/17/97  | 3          |
| P13 | Compliance and Enforcement Committee Policy                    | Policy | 5/9/97   | 13         |
| P14 | Enforcement of Annual Emissions Inventory Questionnaire Policy | Policy | 2/4/99   | 7          |
| P15 | Water Quality Compliance Enforcement Escalation Policy         | Policy | 10/20/00 | 7          |
| P16 | Compliance and Enforcement Press Policy                        | Policy | 10/12/96 | 7          |
| P17 | Reporting Requirements for Public Water Systems Policy         | Policy | 9/25/96  | 7          |

**REDLINED CHAPTERS AND APPENDICES  
REFLECTING CHANGES MADE IN THE  
FIRST QUARTER 2003 AND THE FOURTH QUARTER 2003 UPDATES**

## **CHAPTER 3: INSPECTION PROCEDURES**

Although the primary purpose of an ADEQ inspection is to evaluate compliance with environmental laws, including rules and permits, it also serves as an opportunity for ADEQ to promote pollution prevention and compliance by offering technical assistance. As a result, ADEQ strives not only to identify all instances of non-compliance, but also to identify opportunities for pollution prevention and actions that might be taken to avoid future non-compliance. ADEQ will differentiate between requirements and recommendations both during the inspection and within the inspection report.

**Appendix:** A table describing ADEQ's authorities to conduct inspections can be found as Appendix M5.

**Policy:** The Inspection Procedures Policy can be found as Appendix P8.

**Policy:** The Drinking Water Program Sanitary Survey Policy can be found as Appendix P12.

By law,<sup>1</sup> the inspection procedures described in [A.R.S. § 41-1009](#) and outlined below do not apply to:

- Inspections where ADEQ has a reasonable suspicion to believe that the regulated person is engaged in criminal activity.
- Inspections that are not necessary for the issuance of a license, or to determine compliance with licensure requirements.

Pursuant to ADEQ policy, though, the inspection procedures described in [A.R.S. § 41-1009](#) and outlined below apply to all instances where an ADEQ employee will be conducting an inspection to determine:

- Compliance with a license (permit);
- Eligibility for a license (permit); and
- Compliance with environmental statutes, rules, orders, judgments or decrees.<sup>2</sup>

**Appendix:** A list of those agency activities that are exempt from ADEQ's policy of following the [A.R.S. § 41-1009](#) inspection rights procedures can be found as Appendix M1.<sup>3</sup>

---

<sup>1</sup>See [A.R.S. § 41-1009\(J\)](#)

<sup>2</sup>As mentioned previously in the discussion of regulatory reform, [A.R.S. § 41-1009](#), does not apply to compliance and enforcement inspections that do not concern license compliance or eligibility (*see* [A.R.S. § 41-1009\(J\)](#)). As a matter of policy, though, ADEQ believes that it is in the best interests of the public and the agency that all ADEQ compliance and enforcement inspections conform with [A.R.S. § 41-1009](#).

<sup>3</sup>Other exempt activities may be added to the list by filing a written request with the Office of Special Counsel.

Although intended to provide consistency, these procedures are not intended to limit the enforcement discretion of ADEQ. Case-specific deviations from these procedures are permitted with prior approval from the appropriate ADEQ division director. Failure to follow these procedures will not prevent ADEQ from bringing an enforcement action that is otherwise appropriate to the violation.

### **STEP 1: Inspection Preparation**

Prior to conducting an inspection at a facility, the inspector must review the facility's file(s) and the ICE database for all compliance related information, including associated correspondence. The inspector must also determine whether a facility-specific inspection checklist has been developed. If a checklist has already been developed the inspector must review the checklist and make any necessary changes. If a checklist has not already been developed, the inspector must develop a checklist based upon the statutes, rules, permits, administrative orders, and civil judgments that apply to the facility prior to conducting the inspection. The checklist may also contain preventative measures or recommendations that are not based upon legal requirements, but must be noted as such in the checklist and any reports or other correspondence based upon the checklist.

**ICE:** Once the file review has been completed, the inspector must enter *Pre-Inspection File Review Completed* as an action in the Inspection Screen.

### **STEP 2: Inspection Scheduled**

While some ADEQ programs schedule inspections with the facility, others find it more effective to conduct inspections without prior notification of the facility.<sup>4</sup>

**ICE:** Regardless of whether the facility is notified beforehand, *Inspection Scheduled* must be entered as an action in the Inspection Screen. The date to be entered will be the date the facility inspection is to be initiated.

### **STEP 3: Identification**

Immediately upon entering the facility, the inspector must present an ADEQ photo identification badge to the regulated person or the authorized facility representative.

#### ***If a person/representative is not present at the site:***

The inspector must attempt to contact an authorized representative via telephone prior to entry of the facility. If this is unsuccessful, the inspector must note this on the Notice of Inspection Rights form and place a copy in the facility file. The inspector may then proceed with the inspection.

---

<sup>4</sup>Pursuant to [A.R.S. § 49-203\(B\)\(1\)](#) which applies to water quality control related inspections, prior notice is required unless ADEQ determines that "reasonable grounds exist to believe that such notice would frustrate enforcement of water quality control laws." If such a determination is made, a description of the grounds must be documented in the Inspection Screen of ICE.

***If the person/representative refuses entry:***

The inspector should identify ADEQ's legal authority for conducting the inspection and explain that ADEQ will immediately contact the Attorney General's Office to obtain a search warrant.<sup>5</sup>

The inspector must then immediately find the closest public right-of-way and contact his or her supervisor to explain the situation. The supervisor should then contact the Attorney General's Office with assistance from ADEQ's Office of Special Counsel for the purpose of seeking a search warrant. The inspector should remain at the closest public right-of-way until receiving the search warrant. Immediately upon receipt of the search warrant, the inspector will conduct the inspection with the assistance of the appropriate local law enforcement authority.

**Policy:** The Site Access Policy can be found as Appendix P9.

**STEP 4: Inspection Rights Explained**

Upon entering the facility, the inspector must explain the following to the regulated person or authorized facility representative:

- The purpose of the inspection
- The legal authority for conducting the inspection
- Any applicable fees that may be charged for the inspection
- That the regulated person or the authorized facility representative is entitled to accompany the inspector during the inspection, including being present for any interview, except confidential interviews
- That if requested by the regulated person or authorized facility representative, ADEQ will provide copies, free of charge, of any original documents taken by ADEQ during the inspection
- The regulated person or the authorized facility representative is entitled to a split of any sample(s) taken during the inspection unless the split of the sample(s) would prohibit the analysis from being conducted or render the analysis inconclusive
- The regulated person or the authorized facility representative is entitled to copies of any analysis performed on samples taken during the inspection. ADEQ will provide such copies at its expense

**STEP 5: Inspection Rights Form Presented for Signature**

Once the inspector has explained the inspection rights, he or she must provide the regulated person or the authorized facility representative with a Notice of Inspection Rights form and review it with the regulated person or authorized facility representative. After answering any questions, the ADEQ employee must request that the regulated person/representative sign the form.

**Boilerplate:** The boilerplate Notice of Inspection Rights form can be found as Appendix B23.

---

<sup>5</sup>See Appendix M5 for a table describing ADEQ's authorities for conducting inspections.

***If the person/representative signs the form:***

One copy will be provided to the regulated person or authorized facility representative and another copy will be placed in the facility file.

***If the person/representative declines to sign the form:***

The inspector must note that decision on the form and provide a copy to the person/representative and place another copy in the facility file. The inspector may still proceed with the inspection.

**STEP 6: Inspection Performed**

Inspections performed by ADEQ will be based upon the checklist developed specifically for the facility as described in Step 1. During the course of the inspection, ADEQ will inform each person whose conversation with the inspector is tape recorded that the conversation is being recorded. Furthermore, before interviewing any person during an inspection, ADEQ will inform the person to be interviewed that statements made by that person may be included in the inspection report.<sup>6</sup>

**ICE:** Upon completion of the inspection, the inspector must enter *Inspection Conducted* in the Inspection Screen.

**STEP 7: Inspection Report/Informal Compliance Assurance Documents Created<sup>7</sup>**

After completion of the inspection, the inspector must generate a report summarizing the inspection and identifying those items that were evaluated during the course of the inspection. The inspection report must also set forth all violations or potential violations identified during the inspection. The report may also include ADEQ recommendations, but must clearly differentiate them from violations.

***If there are no violations found during the course of the inspection:***

The inspection report must state in specific terms what the inspection covered and in general terms what it did not (based upon the checklist used to conduct the inspection). The inspection report must also include a statement that no ADEQ action will result from the inspection.

***If there are violations that do not constitute SNC found during the course of the inspection that are corrected before ADEQ leaves the site:***

The violation(s) will be noted in the inspection report and no enforcement will be taken. Although ADEQ will not initiate enforcement, the violation must still be logged in the ICE database because if the same violation is discovered in another inspection of the facility within a two year period, it will be considered Significant Non-Compliance (SNC) and will result in the

---

<sup>6</sup>As a matter of policy, ADEQ will not include confidential interviews in the inspection report.

<sup>7</sup>This section identifies the compliance assurance document that will be used for a particular category of violation. Chapter 4 (Violation Categories) explains how to determine which category applies. Chapter 5 (Informal Compliance Assurance Tools) explains how to prepare the document.

preparation of a Notice of Violation (NOV) for approval by the appropriate Division Director or Regional Director.

**ICE:** If violations are discovered, the inspector must enter *Case Recommended* as an action in the Inspections Screen and enter the alleged violations, description of facts, compliance documentation requirements and the date corrected (i.e., the date of the inspection under this scenario) in the Case Screen.

***If there are violations that do not constitute SNC found during the course of the inspection that are not corrected prior to ADEQ leaving the site:***

ADEQ will issue the responsible party a letter known as a Notice of Opportunity to Correct (NOC) allowing an opportunity to correct deficiencies.

**Boilerplate:** The boilerplate Notice of Opportunity to Correct (NOC) can be found as Appendix B15.

**ICE:** If violations are discovered, the inspector must enter *Case Recommended* as an action in the Inspections Screen and enter the alleged violations, description of facts and compliance documentation requirements in the Case Screen.

***If there are SNC violations found during the course of the inspection:***

ADEQStaff will issueprepare a Notice of Violation (NOV) to the responsible party and cover letter for approval by the appropriate Division Director or Regional Director.

**Boilerplate:** The boilerplate Notice of Violation (NOV) can be found as Appendix B18.

**Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.

**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.

**ICE:** If violations are discovered, the inspector must enter *Case Recommended* as an action in the Inspections Screen and enter the alleged violations, description of facts and compliance documentation requirements in the Case Screen.

***If there are violations that constitute SNC and violations that do not constitute SNC (a.k.a. “other”) violations found during the course of the inspection:***

ADEQStaff will issueprepare a Notice of Violation (NOV) to the responsible party and cover letter for approval by the appropriate Division Director or Regional Director.

**Boilerplate:** The boilerplate Notice of Violation (NOV) with “other” violations can be found as Appendix B17.

**Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.

**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.

**ICE:** If violations are discovered, the inspector must enter *Case Recommended* as an action in the Inspections Screen and enter the alleged violations, description of facts and compliance documentation requirements in the Case Screen.

**STEP 8: Inspection Report/Informal Compliance Assurance Documents Distributed**

The ADEQ inspector must give a copy of the inspection report to the person or facility representative at the time of the inspection or within 45 calendar days after the conclusion of the inspection. If the report is not provided at the time of the inspection, it must be hand delivered or sent by U.S. mail by the 45th calendar day, following the conclusion of the inspection.

**ICE:** After issuing the inspection report, the inspector must enter *Inspection Report Sent to RP* as an action in the Inspection Screen.

**STEP 9: Action Updates Sent**

At least once every month after the commencement of the inspection and until ADEQ either takes action or decides not to take action, ADEQ must send the responsible party an update letter describing the status of any action resulting from an inspection.

ADEQ must continue to send an action update letter every month until one of the following occurs:

- ADEQ sends the responsible party an inspection report that includes a statement that no further action will be taken based upon the inspection.
- ADEQ sends the responsible party an NOC closure letter for an NOC resulting from the inspection.
- ADEQ sends the responsible party an NOV closure letter (with no further action) for an NOV resulting from the inspection and closes the case.
- ADEQ files a civil complaint for a violation identified during the inspection.
- ADEQ signs a Consent Order for a violation identified during the inspection.
- ADEQ issues a Compliance/Abatement Order for a violation identified during the inspection.

**Boilerplate:** The boilerplate Action Update Letter can be found as Appendix B1.

**Boilerplate:** The boilerplate NOC Closure Letter can be found as Appendix B14.

**Boilerplate:** The boilerplate ~~NOV Closure~~Compliance Documented Letter (reserving further action) can be found as Appendix B20.

**Boilerplate:** The boilerplate NOV Closure Letter (with no further action) can be found as Appendix B19.

**ICE:** After sending an Action Update Letter, the inspector must enter *Action Update Letter Sent to RP* as an action in either the Inspection Screen or the Case Screen (depending on whether a case has been opened). If ~~an NOV Closure~~a Compliance Documented Letter (reserving further action) has been sent, ~~NOV Closure~~Compliance Document Letter Sent to RP must be entered as an action in the Case Screen. If an NOV Closure Letter (with no further action) has been sent,



*NOV Closure Letter Sent to RP* ~~*and Case Closed with NOV*~~ *(case closure)* must be entered as actions in the Case Screen.

## **CHAPTER 4: VIOLATION CATEGORIES**

All violations discovered by ADEQ during the course of an inspection or by any other means will result in either an informal or formal enforcement response by ADEQ. The categoryseverity of the violation will dictate the type of enforcement response to be initiated by ADEQ. A violation falling below the level of Significant Non-Compliance (SNC) will result in ADEQ's allowing an opportunity to correct the deficiency without further enforcement (so long as the violation is corrected within a reasonable period of time). Failing to achieve compliance within the time specified in the letter from ADEQ providing an opportunity to correct deficiencies (an NOC) is SNC. All instances of non-compliance meeting or exceeding the SNC criteria will result in ADEQ's issuing the preparation of a letter that puts the responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental law has occurred. The letter, a Notice of Violation (NOV), describes the facts known to ADEQ at the time of issuance and cites the laws or rules that ADEQ believes the party has violated.

A subcategory of SNC is Penalty Non-Compliance (PNC). PNC is defined as those SNC violations that will result in ADEQ seeking monetary penalties in addition to compliance. Achieving compliance within the specified time period in an NOV will result in no further enforcement (provided the violation does not also constitute PNC). If the SNC violation is not resolved by the deadline specified within the NOV, ADEQ will attempt to negotiate an administrative Consent Order (or a civil Consent Judgment if the SNC violation is also PNC). If attempts to negotiate a Consent Order (or Consent Judgment) are unsuccessful, ADEQ will issue a unilateral Compliance Order requiring compliance within a reasonable time (or if PNC, ask the Attorney General's Office to file a civil lawsuit).

### **MINOR VIOLATIONS**

Minor violations are those that pose a minimal or non-existent risk to public health and the environment. In other words, a minor violation does not create a reasonable probability of material harm to any person, the public health, safety, welfare or the environment, or the inability to perform such an assessment as a result of the violation. For violation of a statute or rule, or a permit condition based upon a statute or rule, the minor violations are listed as appendices to this handbook and can also be found in the ICE database.<sup>1</sup> For violations of permit conditions that are not listed in one of the appendices, the determination will be made on a case-by-case basis and be noted in the facility's inspection checklist (i.e., ADEQ will determine whether the violation creates a reasonable probability of material harm to any person, the public health,

---

<sup>1</sup>If a violation not listed in an appendix is discovered during the course of an inspection or investigation, staff must provide the appropriate ADEQ unit managerDirector with a recommended category for listing. The appropriate unit manager, after consultation with the appropriate section manager and ADEQ's Compliance and Enforcement Coordinator, will make the final designation of the proper category for a violation not already listed in an appendix to this handbook. The same process applies tosame approval is required for suggested changes in a category for those violations already listed in an appendix to this handbook.

safety, welfare or the environment or the inability to perform such an assessment as a result of the violation.)<sup>2</sup>

#### Appendix:

| Program                      | Minor Violation Appendix |
|------------------------------|--------------------------|
| Air Quality                  | L2                       |
| <u>Biosolids</u>             | <u>L22</u>               |
| Drinking Water               | L6                       |
| Hazardous Waste              | L8                       |
| Reuse of Reclaimed Water     | L10                      |
| Solid Waste                  | L12                      |
| UST Inspections & Compliance | L14                      |
| Vehicle Emission Inspections | L16                      |
| Water Pollution Control      | L18                      |
| Water Quality Permit         | L19                      |

#### MAJOR VIOLATIONS

Major Violations are those that pose a risk to any person, the public health, safety or welfare or the environment or that cannot be corrected within a reasonable amount of time.<sup>3</sup> ADEQ considers risk to mean “a reasonable probability of material harm to any person, the public health, safety, welfare or the environment or the inability to perform such an assessment as a result of the violation.” For violation of a statute, a rule, or a permit condition based upon statute or rule, major violations are listed in the appendices to this handbook.<sup>1</sup> For violations of permit conditions that are not listed in one of the appendices, the determination will be made on a case-by-case basis and be noted in the facility’s inspection checklist (i.e., ADEQ will determine whether there is a reasonable probability of material harm to any person, the public health, safety,

---

<sup>2</sup>If there has not been a previous determination as to whether violation of the condition is a major violation, staff must provide the appropriate ~~compliance or enforcement unit manager and the appropriate permit or plan review manager~~ Division Director or Regional Director with a recommendation as to whether violation of the condition poses a reasonable probability of material harm to any person, the public health, safety, welfare or the environment or the inability to perform such an assessment as a result of the violation. ~~The appropriate unit manager(s), after consultation with the appropriate section manager(s) and ADEQ Compliance and Enforcement Coordinator, will make the~~ Once the Division Director or Regional Director has made a final determination ~~of the risk associated with violation of the condition. Once the final determination has been made,~~ an appropriate notation must be made on the facility’s inspection checklist. The same process applies to suggested changes to inspection checklist notations.

<sup>3</sup>See A.R.S. § 41-1009(E)(2) and (4)

welfare or the environment or the inability to perform such an assessment as a result of the violation.)<sup>2</sup>

**Appendix:**

| Program  | Major Violation Appendix |
|--|--------------------------|
| Air Quality                                      | L1                       |
| Asbestos NESHAP                                  | L3                       |
| <u>Biosolids</u>                                 | <u>L23</u>               |
| Drinking Water                                   | L5                       |
| <u>Drinking Water Monitoring &amp; Reporting</u> | L7                       |
| L4 Hazardous Waste                               |                          |
| LUST Enforcement                                 | L21                      |
| <u>Operator Certification</u>                    | <u>L25</u>               |
| Reuse of Reclaimed Water                         | L9                       |
| Solid Waste                                      | L11                      |
| UST Inspections & Compliance                     | L13                      |
| Vehicle Emission Inspections                     | L15                      |
| Water Pollution Control                          | L17                      |
| Water Quality Permit                             | L20                      |

**SIGNIFICANT NON-COMPLIANCE (SNC)**

Significant Non-Compliance (SNC) establishes the level at which ADEQ will issue staff will prepare for approval by the appropriate Division Director or Regional Director, a Notice of Violation and which reserve the ADEQ's right to pursue formal enforcement, including civil penalties. Non-compliance falling below the level of SNC will be afforded an opportunity to correct Those violations which do not result in the issuance of an NOV will result in a Notice of Opportunity to Correct (NOC). which affords an opportunity to correct the violation without the threat of further enforcement if corrected. SNC includes **any** of the following types of violations:

- A major violation
- A minor violation committed intentionally
- A minor violation that has continued beyond a deadline set within a Notice of Opportunity to Correct (i.e., the responsible party failed to document compliance as noted in the Notice of Opportunity to Correct)
- A violation previously noted or addressed in an NOC or NOV within the past two years
- A violation previously addressed in an administrative order or civil complaint within the past five years
- Violation of a Compliance Order, Consent Order, Consent Judgment or Consent Decree

### PENALTY NON-COMPLIANCE (PNC)

Penalty Non-Compliance (PNC) establishes the level at which ADEQ will seek monetary penalties via a referral to the Attorney General's Office, or in the case of drinking water violations, through the issuance of a Compliance Order with Civil Administrative Penalty. Deciding when to seek penalties is a determination made on a case-by-case basis using the criteria described below. Although ADEQ will consider all of the following in determining PNC, a violation of statute, rule, administrative order, or permit meeting any of the criteria may constitute PNC:

- The violation was intended to result in, or actually resulted in, significant cost savings or profits to the responsible party
- The responsible party engaged in willful or negligent conduct leading to the violation (e.g., the lack of provisions for detecting or preventing the violation)
- The responsible party previously received an NOV or administrative order for the same violation within the past two years
- ADEQ previously filed a civil complaint against the responsible party
- The violation resulted in actual harm, or substantial risk of harm, to human health or the environment as determined using the following factors:
  - ▶ An actual release
  - ▶ Violation of a water quality standard<sup>4</sup>
  - ▶ Exceedance of a soil remediation standard<sup>5</sup>
  - ▶ Severe mismanagement of a pollutant
  - ▶ The amount of the pollutant involved
  - ▶ The toxicity of the pollutant involved
  - ▶ The proximity of biological/human receptors or sensitive environmental media such as a drinking water supply, populated area or surface water
  - ▶ Lack of notifying persons potentially affected by the violation as required by law

---

<sup>4</sup> A.A.C. R18-11-101 *et seq.*

<sup>5</sup> A.A.C. R18-7-101 *et seq.*

## **CHAPTER 5: INFORMAL COMPLIANCE ASSURANCE TOOLS**

The majority of violations ADEQ discovers are resolved through the use of informal compliance assurance tools. Although ADEQ has formal enforcement tools at its disposal and reserves the right to use them at any time, it will use formal enforcement as an initial enforcement response only under the most egregious or time-sensitive situations. Furthermore, it is ADEQ's longstanding position that use of an informal compliance assurance tool does not constitute an "action against the party" and is not an "appealable agency action".<sup>1</sup>

### **COMPLIANCE STATUS LETTER (CSL)**

When ADEQ records indicate the presence of a potential violation that is older than 180 days and an ADEQ action has not previously been initiated, a compliance status letter may be sent to the facility prior to the issuance of a Notice of Violation. A compliance status letter provides the responsible party an opportunity to submit evidence that the previously identified violation has been corrected or the violation does not exist.

**Boilerplate:** The boilerplate Compliance Status Letter can be found as Appendix B9.

### **CAUTION LETTER (CL) (water permit violations only)**

A caution letter is an informal compliance assurance tool used by ADEQ to notify a water quality permittee that the violations reported to ADEQ on a Self-Monitoring Report Form (SMRF) warrant some sort of corrective action by the permittee. Discharge limit or Technical Review Criteria (TRC) violations constituting a caution level exceedance (CLE) will result in issuance of a Caution Letter (CL). The Caution Letter states that ADEQ will issue an NOV if similar levels are reported in the next three review periods. A caution letter allows the permittee to resolve a problem before it becomes significant. To that end, ADEQ will offer compliance assistance in the letter.

**Boilerplate:** The boilerplate Caution Letter can be found as Appendix B5.

**Appendix:** The Caution Levels for water permit violations can be found as Appendix L19.

### **NOTICE OF OPPORTUNITY TO CORRECT DEFICIENCIES (NOC)**

An NOC is an informal compliance assurance tool used under [A.R.S. § 41-1009\(E\)](#) to put a responsible party (such as a facility owner or operator) on notice that ADEQ believes a non-significant violation of an environmental law has occurred. It describes the facts known to ADEQ at the time of the letter and cites the laws or rules that ADEQ believes have been violated. An NOC provides the responsible party an opportunity to resolve the violation(s) or deficiency(ies) before ADEQ takes formal enforcement. If the deficiencies are corrected, there will be no enforcement taken by ADEQ.

---

<sup>1</sup>As defined in A.R.S. §§ [41-1092.12\(E\)\(1\)](#) and [41-1092\(3\)](#), respectively.

- ADEQ will provide the responsible party an opportunity to correct for all violations that do not constitute SNC discovered during the course of an inspection that are not resolved before the conclusion of the inspection.
- An NOC will allow the responsible party a reasonable time in which to resolve the violation. The time allowed will not exceed 180 calendar days from date of issuance of the NOC or as otherwise specified in an applicable permit.
- If the violation is not corrected within the time allowed by the NOC, ADEQ will issue an NOV.
- If the violation is corrected within the time allowed by the NOC, ADEQ will issue a closure letter to the responsible party and forgo escalated enforcement (including seeking civil penalties).

**Boilerplate:** The boilerplate Notice of Opportunity to Correct Deficiencies can be found as Appendix B15.

**Boilerplate:** The boilerplate NOC Closure Letter can be found as Appendix B14.

#### NOTICE OF VIOLATION (NOV)

An NOV is an informal compliance assurance tool used by ADEQ to put a responsible party (such as a facility owner or operator) on notice that the Department believes a significant violation of environmental law has occurred. It describes the facts known to ADEQ at the time of issuance and cites the laws or rules that ADEQ believes the party has violated. An NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected. Unlike in an NOC, ADEQ will explicitly reserve the right to seek a civil penalty regardless of whether the responsible party achieves or demonstrates compliance.

- ~~ADEQ will issue an NOV for~~ all violations meeting the definition of Significant Non-Compliance (SNC), staff will prepare an NOV for approval by the appropriate Division Director or Regional Director.
- If ADEQ discovers both violations that constitute SNC and violations that do not constitute SNC during the course of an inspection ~~ADEQ, staff~~ will forgo affording an opportunity to correct deficiencies and ~~issue~~ prepare for approval an NOV addressing all alleged violations, differentiating between those violations that constitute SNC and those that do not constitute SNC violations in the notice.
- An NOV will provide the responsible party a reasonable time to resolve the violation. The time allowed should not exceed 90 calendar days, but under no circumstances will the time allowed be greater than 120 days from the date of issuance of the NOV.
- If the responsible party fails to adequately document resolution of the violation within the time provided by the NOV, ADEQ will initiate formal enforcement.
- If the violation is resolved within the time provided by the NOV and the violation does not constitute PNC, ADEQ will issue a closure letter to the responsible party and forgo the initiation of formal enforcement (including seeking civil penalties).

- Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.
- Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.
- Boilerplate:** The boilerplate Notice of Violation can be found as Appendix B18.
- Boilerplate:** The boilerplate Notice of Violation alleging both violations that constitute SNC and violations that do not constitute SNC (a.k.a. “other” violations) can be found as Appendix B17.
- Boilerplate:** The boilerplate Notice of Violation alleging water quality permit self-monitoring violations can be found as Appendix B16.
- Boilerplate:** The boilerplate NOV Closure Letter (reserving further action) can be found as Appendix B20.
- Boilerplate:** The boilerplate NOV Closure Letter (with no further action) can be found as Appendix B19.

#### NOTICE OF ENVIRONMENTAL NUISANCE (NEN)

An NEN is an informal compliance assurance tool used by ADEQ to put a responsible party, such as a facility owner or operator, on notice that the Department believes an environmental nuisance condition exists. It describes the facts known to ADEQ at the time of issuance and cites the environmental nuisance provision that ADEQ believes applies. An NEN provides the responsible party an opportunity to do any of the following before ADEQ takes formal action: (1) meet with ADEQ and discuss the facts surrounding the nuisance, (2) demonstrate to ADEQ that no nuisance exists, or (3) document that the nuisance has been abated.

- For all environmental nuisance conditions, staff will prepare an NEN for approval by the appropriate Division Director or Regional Director.
- Because environmental nuisances are limited to those conditions that are not otherwise subject to regulation by ADEQ, ADEQ will not issue an NEN for a situation covered by a violation listed as major or minor in an appendix.<sup>2</sup>
- An NEN will provide the responsible party a reasonable time to resolve the nuisance condition. The time allowed should not exceed 90 calendar days, but under no circumstances will the time allowed be greater than 120 days from the date of issuance of the NEN.
- If the responsible party fails to adequately document resolution of the nuisance condition within the time provided by the NEN, ADEQ will initiate formal enforcement.
- If the nuisance condition is resolved within the time provided by the NEN, ADEQ will issue a closure letter to the responsible party and forgo the initiation of formal enforcement.

**Appendix:** The Environmental Nuisance Condition List can be found as Appendix L24.

---

<sup>2</sup>See A.R.S. § 49-141(A)



**Boilerplate:** The boilerplate Notice of Environmental Nuisance Cover Letter Language can be found as Appendix B37.

**Boilerplate:** The boilerplate Notice of Environmental Nuisance can be found as Appendix B36.

**Boilerplate:** The boilerplate NEN Closure Letter can be found as Appendix B38.

## **CHAPTER 7: ENFORCEMENT ESCALATION PROCEDURES**

Except for violations that do not constitute SNC identified and corrected during the course of an inspection,<sup>1</sup> ADEQ will respond to every identified violation. Under normal circumstances, ADEQ will initially address non-compliance through the use of an informal compliance assurance tool. As a result, ADEQ will either provide an opportunity to correct (NOC) or issue a Notice of Violation (NOV) for each violation identified. There is no requirement, though, that ADEQ first use an informal compliance assurance tool before initiating formal enforcement. (i.e., before issuing an administrative order, or seeking injunctive relief and civil penalties through a referral to the Attorney General). Furthermore, even if a violation is resolved under an NOV, ADEQ may pursue civil penalties for those violations that constitute Penalty Non-Compliance (PNC). Although ADEQ has adopted formal policies (listed below) for dealing with several specific types of violations, the procedures described in this chapter generally apply to all enforcement actions taken by the agency.

Although intended to provide consistency, these procedures are not intended to limit the enforcement discretion of ADEQ. Case-specific deviations from these procedures are permitted with prior approval from the appropriate ADEQ division director. Failure to follow these procedures will not prevent ADEQ from bringing an enforcement action that is otherwise appropriate to the violation.

- Policy:** The Enforcement of Annual Emissions Inventory Questionnaire Policy can be found as Appendix P14.
- Policy:** The Water Quality Compliance Enforcement Escalation Policy can be found as Appendix P15.
- Policy:** The Reporting Requirements for Public Water Systems Policy can be found as Appendix P17.

The following steps will be taken once a violation has been identified, regardless of how the violation has been identified and unless a more specific policy applies:

### **STEP 1: Classify the Violation as Major or Minor**

Classification of the violation as major or minor will be based upon the following:

- For violations of statutes, rules, or permit conditions based upon statutes or rules, classification of the violation as major or minor will be based upon the appropriate Appendix to this handbook.<sup>2</sup>

---

<sup>1</sup> ADEQ will note in the inspection report and in the ICE database those violations that do not constitute SNC discovered and corrected during the course of an inspection.

<sup>2</sup> If a violation not listed in an appendix is discovered during the course of an inspection or investigation, staff must provide the ~~appropriate ADEQ unit manager~~ **Director** with a recommended category for listing. ~~The appropriate unit manager, after consultation with the appropriate section manager and ADEQ's Compliance and~~

- For violations of permit conditions not listed in an appendix, classification will be based upon the appropriate notation on the inspection checklist for the facility.<sup>3</sup>

Regardless of the classification as major or minor, potential criminal acts should always be referred to the Attorney General's Office as soon as possible.

**Appendix:**

| Program                               | Minor Violation Appendix | Major Violation Appendix |
|---------------------------------------|--------------------------|--------------------------|
| Air Quality                           | L2                       | L1                       |
| Asbestos NESHAP                       | --                       | L3                       |
| <u>Biosolids</u>                      | <u>L22</u>               | <u>L23</u>               |
| Drinking Water                        | L6                       | L5                       |
| Drinking Water Monitoring & Reporting | --                       | L4                       |
| Hazardous Waste                       | L8                       | L7                       |
| LUST Enforcement                      | --                       | L21                      |
| <u>Operator Certification</u>         | <u>--</u>                | <u>L25</u>               |
| Reuse of Reclaimed Water              | L10                      | L9                       |
| Solid Waste                           | L12                      | L11                      |
| UST Inspections & Compliance          | L14                      | L13                      |
| Vehicle Emission Inspections          | L16                      | L15                      |
| Water Pollution Control               | L18                      | L17                      |
| Water Quality Permit                  | L19                      | L20                      |

---

Enforcement Coordinator, will make the final designation of the proper category for a violation not already listed in an appendix to this handbook. The same process applies to suggested approval is required for a changes in a category for those violations already listed in an appendix to this handbook.

<sup>3</sup>If there has not been a previous determination as to whether violation of the condition is a major violation, staff must provide the appropriate compliance or enforcement unit manager and the appropriate permit or plan review manager Division Director or Regional Director with a recommendation as to whether violation of the condition poses a reasonable probability of material harm to any person, the public health, safety, welfare or the environment or the inability to perform such an assessment as a result of the violation. The appropriate unit manager(s), after consultation with the appropriate section manager(s) and ADEQ Compliance and Enforcement Coordinator, will make the final determination of the risk associated with violation of the condition. Once the final determination has been made by the Division Director or Regional Director, an appropriate notation must be made on the facility's inspection checklist. The same process applies to suggested changes to inspection checklist notations.

**ICE:** For all recommended cases (i.e., instances where violations have been discovered during the course of an inspection), the appropriate violations must be entered in the Case Screen.

**STEP 2: Determine Whether the Violation is Significant Non-Compliance (SNC)**

A violation is SNC, if it is **any** of the following:

- A major violation
- A minor violation committed intentionally
- A minor violation that has continued beyond a deadline set within a Notice of Opportunity to Correct (i.e., the responsible party failed to document compliance as noted in the Notice of Opportunity to Correct)
- A violation previously noted or addressed in an NOC or NOV within the past two years;
- A violation previously addressed in an administrative order or civil complaint within the past five years
- A violation of a Compliance Order, Consent Order, Consent Judgment or Consent Decree

**STEP 3: ~~Issue~~Prepare the Appropriate Informal Compliance Assurance Notice**

The ICE database has been developed to automatically generate the appropriate informal compliance assurance notice based upon the following:

*If the violation is SNC (regardless of whether the violation is corrected before ADEQ leaves the site):*

- ~~A~~Staff will prepare a Notice of Violation (NOV) and cover letter for approval by the appropriate Division Director or Regional Director.

***Text Moved Here: 1***

**Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.

**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.

**Boilerplate:** The boilerplate Notice of Violation can be found as Appendix B18.

**Boilerplate:** The boilerplate Notice of Violation alleging water quality permit self-monitoring violations can be found as Appendix B16.

**Boilerplate:** The boilerplate Notice of Violation alleging failure to submit a self-monitoring report form for a water quality permit can be found as Appendix B34.

***End Of Moved Text***

***If both violations constituting SNC and violations not constituting SNC violations are discovered (regardless of whether the violation is corrected before ADEQ leaves the site):***

Staff will prepare a Notice of Violation (NOV) and cover letter for approval by the appropriate Division Director or Regional Director.

**Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.

**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.

**Boilerplate:** The boilerplate Notice of Violation alleging both violations constituting SNC and violations not constituting SNC (a.k.a. “other” violations) can be found as Appendix B17.

**If the violation is not SNC and was not corrected prior to ADEQ leaving the site:**

ADEQ will provide an opportunity to correct the deficiencies through the issuance of a letter (an NOC generated automatically by the ICE database).<sup>4</sup> The NOC will be sent certified mail, return receipt requested.

**Boilerplate:** The boilerplate Notice of Opportunity to Correct Deficiencies can be found as Appendix B15.

**ICE:** Once sent, *NOC Sent to RP* must be entered as an action in the Case Screen.  
Once received by the responsible party, *NOC Received by RP* must be entered as an action in the Case Screen.

**STEP 4:** If SNC, Seek Approval of Division Director or Regional Director for Issuance of NOV  
All NOV's must be submitted to the Division Director or Regional Director for approval before issuance. The Division Director or Regional Director has the discretion to change an NOV to an NOC based on the specific circumstances surrounding the violation. This discretion may be severely limited, though, in those federal programs for which ADEQ has the primary enforcement responsibility.

**ICE:** 1) When the draft NOV is submitted to the Division Director or Regional Director for review and approval *Notice Decision Sent to Div. Dir. For Review* must be entered as an action in the Cases Screen.  
2) Once a decision has been made, *Division Director Notice Decision Received* must be entered as an action in the Cases Screen.

**If the Division Director or Regional Director approves issuance of the NOV**

- The NOV and cover letter will be sent to the responsible party with a cover letter explaining the NOV.
- Both the cover letter and NOV will be sent via certified mail, return receipt requested.

---

<sup>4</sup>If the violation constitutes a caution level exceedance for a water permit, ADEQ will issue a caution letter.

- If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, a copy of the NOV must be sent to the appropriate county official(s) and to any affected environmental justice community.<sup>5</sup>

~~Text Was Moved From Here: 1~~

- ICE:** ~~1) Case Recommended must be entered as an action in the Inspections Screen and the alleged violations, description of facts and compliance documentation requirements must be entered in the Case Screen.~~
- ~~2) Once sent, NOV Sent to RP must be entered as an action in the Case Screen. Once received by the responsible party, NOV Received by RP must be entered as an action in the Case Screen.~~

~~**If both violations constituting SNC and violations not constituting SNC violations are discovered (regardless of whether the violation is corrected before ADEQ leaves the site):**~~

- ~~• A Notice of Violation (NOV) will be sent to the responsible party with a cover letter explaining the NOV.~~
- ~~• Both the cover letter and NOV will be sent certified mail, return receipt requested.~~
- ~~• If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, a copy of the NOV must be sent to the appropriate county official(s) and if deemed appropriate, to any affected environmental justice community.~~

~~**Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.~~

~~**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.~~

~~**Boilerplate:** The boilerplate Notice of Violation alleging both violations constituting SNC and violations not constituting SNC (a.k.a. “other” violations) can be found as Appendix B17.~~

**Policy:** The Notification Policy For Local Governmental Agencies can be found as Appendix P11.

- ICE:** 1) ~~Case Recommended must be entered as an action in the Inspections Screen and the alleged violations, description of facts and compliance documentation requirements must be entered in the Case Screen.~~
- ~~2) Once sent, NOV Sent to RP must be entered as an action in the Case Screen.~~
- 2) Once received by the responsible party, NOV Received by RP must be entered as an action in the Case Screen.

~~**If the violation is not SNC and was not corrected prior to ADEQ leaving the site:**~~

---

<sup>5</sup>A list of appropriate county officials and environmental justice communities will be maintained by the Office of Special Counsel.

**Division Director or Regional Director does not approve issuance of the NOV**

ADEQ will provide an opportunity to correct the deficiencies through the issuance of a letter (an NOC generated automatically by the ICE database).<sup>6</sup> The NOC will be sent certified mail, return receipt requested.

**Boilerplate:** The boilerplate Notice of Opportunity to Correct Deficiencies can be found as Appendix B15.

- ICE:** ——— 1) ~~Case Recommended must be entered as an action in the Inspections Screen and the alleged violations, description of facts and compliance documentation requirements must be entered in the Case Screen.~~
- 2) Once sent, *NOC Sent to RP* must be entered as an action in the Case Screen. Once received by the responsible party, *NOC Received by RP* must be entered as an action in the Case Screen.
- 
- 

**STEP 45: Determine Whether the Violation is PNC**

Although ADEQ will consider all of the following in determining whether a violation is PNC, a violation of statute, rule, administrative order, or permit meeting any of the following criteria may constitute PNC:

- The violation was intended to result in, or actually resulted in, significant cost savings or profits to the responsible party
- The responsible party engaged in willful or negligent conduct leading to the violation. (e.g., the lack of provisions for detecting or preventing the violation)
- The responsible party previously received a NOV or administrative order for the same violation within the past two years
- ADEQ previously filed a civil complaint against the responsible party.
- The violation resulted in actual harm, or substantial risk of harm, to human health or the environment as determined using the following factors:
  - ▶ An actual release
  - ▶ Violation of a water quality standard<sup>7</sup>
  - ▶ Exceedance of a soil remediation standard<sup>8</sup>
  - ▶ Severe mismanagement of a pollutant
  - ▶ The amount of the pollutant involved
  - ▶ The toxicity of the pollutant involved
  - ▶ The proximity of biological/human receptors or sensitive environmental media such as a drinking water supply, populated area or surface water
  - ▶ Failure to notify persons potentially affected by the violation as required by law

---

<sup>6</sup>If the violation constitutes a caution level exceedance for a water permit, ADEQ will issue a caution letter.

<sup>7</sup>A.A.C. R18-11-101 *et seq.*

<sup>8</sup>A.A.C. R18-7-101 *et seq.*

**STEP 56: Determine the Appropriate Follow-Up Enforcement Activity**

The appropriate follow-up enforcement activity to be taken by ADEQ will be based upon the nature of the violation and the responsible party's response to ADEQ's identification of the violation.

***If the responsible party has been issued an NOV (for a violation that is not PNC) and has adequately documented compliance***

- ~~ADEQ will issue~~ Staff will prepare for the appropriate Division Director or Regional Director, a letter to the facility closing the NOV and stating that ADEQ will take no further action
- If approved by the Division Director or Regional Director, ADEQ will send the NOV Closure Letter (with no further action), administratively close the enforcement case opened by the issuance of the NOV
- ~~ADEQ will~~ and cease sending agency action update letters

**Boilerplate:** The boilerplate NOV Closure Letter (with no further action) can be found as Appendix B19.

- ICE:**
- 1) Upon receipt of the compliance documentation, *NOV Response Received from RP* must be entered as an action and the date achieved must be entered for each compliance documentation requirement in the Case Screen.
  - 2) Once permission to close has been granted by the appropriate Division Director or Regional Director, *Perm. To Close Granted by Div. Director* must be entered in the Cases Screen.
  - 2) Once the closure letter has been sent, *NOV Closure Letter Sent to RP (case closure)* must be entered as actions in the Case Screen.

***If the responsible party has been issued an NOV (for a violation that is PNC) and has adequately documented compliance***

- ADEQ will issue a letter to the facility ~~closing the NOV~~ acknowledging documentation of compliance, but reserving the possibility of further action.
- If the violation was discovered during the course of an inspection, ADEQ will continue to send agency action update letters until either the filing of a civil complaint or sending a letter stating that ADEQ will take no further action.
- When negotiating a settlement penalty with the responsible party, ADEQ will take the timeliness of the responsible party's corrective action into consideration (in addition to the other factors described in Chapter 8 (Penalty Determinations)).



**Boilerplate:** The boilerplate ~~NOV Closure~~Compliance Documented Letter (reserving further action) can be found as Appendix B20.

- ICE:**
- 1) Upon receipt of the compliance documentation, *NOV Response Received from RP* must be entered as an action and the date achieved must be entered for each compliance documentation requirement in the Case Screen.
  - 2) Once the closure letter has been sent, ~~NOV Closure~~Compliance Document *Letter Sent to RP* (~~no case closure~~) must be entered as an action in the Case Screen.

***If the responsible party has been issued an NOV (for a violation that is not PNC) and has not adequately documented compliance within the deadlines set in the NOV:***

- Immediately upon discovery of a missed NOV deadline, an ADEQ compliance officer must contact the responsible party via telephone to discuss the responsible party's options for demonstrating compliance. THIS CONVERSATION MUST BE DOCUMENTED IN THE FACILITY FILE AND THE ICE DATABASE. The ADEQ compliance officer will explain that a Consent Order must be signed within 45 days to avoid the issuance of a unilateral Compliance Order by ADEQ. The employee should also point out that if the alleged violation is resolved within the next 45 days, there will be no need for a Consent Order or Compliance Order. The compliance officer must make it clear, though, that it is at the responsible party's peril to forgo negotiation of a Consent Order in favor of attempting to achieve compliance within 45 days, because at the end of the 45 day period one of the following three things must have occurred:
  - 1) ADEQ must have ~~issued a NOV closure letter~~acknowledged in writing that the Documenting Compliance provisions under the NOV had been met (i.e., the alleged violation has been satisfactorily resolved);
  - 2) ADEQ must have entered into a Consent Order with the responsible party; or
  - 3) ADEQ must have issued a Compliance Order requiring compliance.
- After documenting the telephone conversation ADEQ will send an NOV Reminder Letter to the responsible party certified mail, return receipt requested, with a proposed meeting agenda, a copy of the Consent Order Negotiation Guidelines and the boilerplate Consent Order attached.
- The Director's approval of a draft Consent Order must be obtained via completion and routing of the Enforcement Action/Settlement Approval form prior to sending the draft Consent Order to the responsible party. The draft Consent Order should be attached to the form.
- If the violation was discovered during the course of an inspection, ADEQ will continue to send agency update letters until the entry of a Consent Order or issuance of a Compliance Order.
- ADEQ will then proceed to either negotiate a Consent Order in accordance with the Consent Order Negotiation Guidelines, or issue a Compliance (or Abatement) Order.
- If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, a copy of the Consent Order or Compliance Order must be sent to the

- appropriate county official(s) and if deemed appropriate by the appropriate section manager, to any affected environmental justice community.
- Press materials may be released with the issuance of Consent Order or Compliance (or Abatement) Order if deemed appropriate by the appropriate division director.

**Boilerplate:** The boilerplate NOV Reminder Letter can be found as Appendix B22.

**Boilerplate:** The boilerplate Enforcement Action/Settlement Approval form can be found as Appendix B39.

**Policy:** The Notification Policy For Local Governmental Agencies can be found as Appendix P11.

**Policy:** The Compliance and Enforcement Press Policy can be found as Appendix P16.

- ICE:**
- 1) Immediately after a missed NOV deadline, *NOV Deadline Missed by RP* must be entered as an action in the Case Screen.
  - 2) After the telephone conversation with the RP, *NOV Follow-up Phone Call w/RP* must be entered as an action in the Case Screen.
  - 3) After sending the reminder letter, *NOV Reminder Letter Sent to RP* must be entered as an action in the Case Screen. Once received by the responsible party, *NOV Reminder Letter Received by RP* must be entered as an action in the Case Screen.
  - 4) Once the Enforcement Action/Settlement Approval form has been submitted to the Director, *Req To Pursue Esc. Enforce. Sent to Director* must be entered as an action in the Case Screen.
  - 5) If approval to proceed has been obtained from the Director, *Perm. Granted for Esc. Enforce Frm Director* must be entered as an action in the Case Screen.

***If the responsible party has been issued an NOV (for a violation that is PNC) and has not adequately documented compliance within the deadlines set in the NOV:***

- If the violation *is not* causing an immediate and significant threat to public health or the environment, ADEQ will refer the case to the Attorney General's Office via a Case Development Memorandum for Negotiating a Civil Settlement .
- If the violation *is* causing an immediate and significant threat to public health or the environment, ADEQ will request a temporary restraining order or preliminary injunction via a Request for Assignment of Assistant Attorney General to be followed by a Case Development Memorandum for Filing of a Civil Complaint.
- If the violation was discovered during the course of an inspection, ADEQ will continue to send agency update letters until the filing of a civil complaint.
- If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, notice of the filing of a civil complaint must be sent to the appropriate county official(s) and if deemed appropriate, to any affected environmental justice community
- Civil enforcement actions should be publicized using at least a press release

- Boilerplate:** The boilerplate Request for Assignment of an Assistant Attorney General can be found as Appendix B24.
- Boilerplate:** The boilerplate Case Development Memorandum for Filing a Civil Complaint can be found as Appendix B3.
- Boilerplate:** The boilerplate Case Development Memorandum for Negotiating a Civil Settlement can be found as Appendix B4.
- Policy:** The Notification Policy For Local Governmental Agencies can be found as Appendix P11.
- Policy:** The Compliance and Enforcement Press Policy can be found as Appendix P16.
- ICE:**
- 1) Immediately after a missed NOV deadline, *NOV Deadline Missed by RP* must be entered as an action in the Case Screen.
  - 2) Once the CDM has been signed by the agency's compliance and enforcement coordinator, *Case Development Memorandum Completed* must be entered in the Case Screen.
  - 3) Once an Assistant Attorney General has been assigned, *Assistant Attorney General Assigned* must be entered as an action and the name of the attorney must be entered as additional information in the Case Screen.

***If the responsible party has been issued an NOC and has adequately documented compliance:***

- ADEQ will issue a letter to the responsible party closing the NOC.
- ADEQ will cease sending agency action update letters.

**Boilerplate:** The boilerplate NOC Closure Letter can be found as Appendix B14.

- ICE:**
- 1) Upon receipt of the compliance documentation, *NOC Response Received from RP* must be entered as an action in the Case screen, and the date achieved must be entered for each compliance documentation requirement.
  - 2) Once the closure letter has been sent, *NOC Closure Letter Sent to RP* must be entered as an action in the Case Screen.

***If the responsible party has been issued an NOC and has not adequately documented compliance:***

Within 180 days of the original inspection date, ADEQ must either reinspect the facility or otherwise follow up to determine whether the facility has corrected the violation.

- If the violation *has been* corrected, ADEQ will issue a letter to the responsible party closing the NOC.
- If the violation *has not been* corrected, ADEQ staff will issue an NOV to the responsible party prepare an NOV and cover letter for approval by the appropriate Division Director or Regional Director. This will result in another determination of the appropriate follow-up activity based upon the responsible party's response to the NOV.
- If the responsible party has submitted an inadequate response to ADEQ, ADEQ will send a letter to the responsible party explaining the inadequacy of the response.

- ICE:**
- 1) Upon receipt of a response from the responsible party, *NOC Response Received from RP* must be entered as an action in the Case Screen.
  - 2) Once sent, *NOC Response Letter Sent to RP* must be entered as an action in the Case Screen
  - 3) Immediately after a NOC missed deadline, *NOC Deadline Missed* must be entered and *NOC Follow-up Inspection to be Conducted* must be entered as actions in the Case Screen.

***If the responsible party has been issued a Compliance Order, Abatement Order or entered into a Consent Order and has violated the Order:***

- ~~A Staff will prepare a~~ Notice of Violation (NOV) ~~will be sent to the responsible party with a cover letter explaining the NOV.~~
- ~~Both the cover letter and NOV will be sent certified mail, return receipt requested.~~
- ~~If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, a copy of the NOV must be sent to~~ and cover letter for approval by the appropriate county official(s) and if deemed appropriate, to any affected environmental justice community. Division Director or Regional Director.
- If the violation *is not* causing an immediate and significant threat to public health or the environment:
  - ▶ For non hazardous waste orders, ADEQ will refer the case to the Attorney General's Office via a Case Development Memorandum for the Negotiating a Civil Settlement that will include both injunctive relief and a civil penalty.
  - ▶ For hazardous waste orders, ADEQ will issue an Order Assessing a Civil Penalty.
- If the violation *is* causing an immediate and significant threat to public health or the environment, ADEQ will request a temporary restraining order or preliminary injunction via a Request for Assignment of Assistant Attorney General to be followed by a Case Development Memorandum for Filing a Civil Complaint.
- If the violation was discovered during the course of an inspection, ADEQ will continue to send agency update letters until the filing of a civil complaint .

**Boilerplate:** The boilerplate administrative order Notice of Violation cover letter language can be found as Appendix B26.

**Boilerplate:** The boilerplate Notice of Violation can be found as Appendix B18.

**Boilerplate:** The boilerplate Case Development Memorandum for Negotiating a Civil Settlement can be found as Appendix B4.

**Boilerplate:** The boilerplate Order Assessing a Civil Penalty can be found as Appendix B6.

**Boilerplate:** The boilerplate Case Development Memorandum for Filing a Civil Complaint can be found as Appendix B3.

**Boilerplate:** The boilerplate Request for Assignment of an Assistant Attorney General can be found as Appendix B24.

- ICE:**
- 1) *Case Recommended* must be entered as an action in the Inspections Screen and the alleged violations, description of facts and compliance documentation requirements must be entered in the Case Screen.

- 2) Once sent, *NOV Sent to RP* must be entered as an action in the Case Screen. Once received by the responsible party, *NOV Received by RP* must be entered as an action in the Case Screen.
- 3) Once the CDM has been signed by the agency's compliance and enforcement coordinator, *Case Development Memorandum Completed* must be entered in the Case Screen.
- 4) Once an Assistant Attorney General has been assigned, *Assistant Attorney General Assigned* must be entered as an action and the name of the attorney must be entered as additional information in the Case Screen.

***If the responsible party has been issued a Compliance Order, Abatement Order or entered into a Consent Order and has met the terms of the order:***

ADEQ will issue a Termination of Administrative order to the responsible party.

**Boilerplate:** The boilerplate Termination of Order can be found as Appendix B25.

- ICE:**
- 1) Upon receipt of a request for termination of a Compliance Order, Abatement Order, or Consent Order, *Order Termination Request from RP* must be entered as an action in the Case screen.
  - 2) Once the request has been approved, *Order Terminated* must be entered as an action in the Case Screen.

***If the responsible party is subject to a Civil Judgment (including a Consent Judgment or Consent Decree) and has violated the Judgment:***

- ~~A Staff will prepare a~~ Notice of Violation (NOV) ~~will be sent to the responsible party with a cover letter explaining the NOV.~~
- ~~Both the cover letter and NOV will be sent certified mail, return receipt requested.~~
- ~~If for a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, a copy of the NOV must be sent to~~ and cover letter for approval by the appropriate ~~county official(s) and if deemed appropriate, to any affected environmental justice community.~~
- ~~After closing the NOV (with reservations) ADEQ will~~ Division Director or Regional Director.
- If an NOV is issued and a Compliance Documented Letter (reserving further action) is sent, ADEQ will then request that the responsible party submit payment of the stipulated penalties due under the Consent Judgment or Decree.
- If payment is not submitted after the request, ADEQ will refer the issue to the Attorney General's Office.
- If the violation is of a civil judgment, ADEQ will request that the Attorney General's Office file a motion to show cause via a Request for Assignment of Assistant Attorney General and a Case Development Memorandum for Filing a Civil Complaint.
- If the violation was discovered during the course of an inspection, ADEQ will continue to send agency update letters until the filing of a civil complaint or until notifying the responsible party that no further action will be taken.

- Boilerplate:** The boilerplate Notice of Violation cover letter language can be found as Appendix B21.
- Boilerplate:** The boilerplate Notice of Violation can be found as Appendix B198.
- Boilerplate:** The boilerplate Case Development Memorandum for Filing a Civil Complaint can be found as Appendix B3.
- Boilerplate:** The boilerplate Request for Assignment of an Assistant Attorney General can be found as Appendix B24.
- ICE:**
- 1) *Case Recommended* must be entered as an action in the Inspections Screen and the alleged violations, description of facts and compliance documentation requirements must be entered in the Case Screen.
  - 2) Once sent, *NOV Sent to RP* must be entered as an action in the Case Screen. Once received by the responsible party, *NOV Received by RP* must be entered as an action in the Case Screen.
  - 3) Once sent, *Stipulated Penalty Demand Letter Sent to RP* must be entered as an action in the Case Screen. Once received by the responsible party, *Stipulated Penalty Demand Letter Received by RP* must be entered as an action in the Case Screen. Once paid, *Stipulated Penalty Payment Received from RP* must be entered as an action in the Case Screen.
  - 4) Once the CDM has been signed by the agency's compliance and enforcement coordinator, *Case Development Memorandum Completed* must be entered in the Case Screen.
  - 5) Once an Assistant Attorney General has been assigned, *Assistant Attorney General Assigned* must be entered as an action and the name of the attorney must be entered as additional information in the Case Screen.

***If the responsible party has entered into a Consent Judgment or Consent Decree and has met the terms of the order:***

ADEQ will send a memorandum to the Attorney General's Office requesting the filing of a motion to terminate the Consent Judgment or Decree.

- ICE:**
- 1) Upon receipt of a request for termination of a Consent Judgment or Consent Decree, *Judgment/Decree Termination Request from RP* must be entered as an action in the Case screen.
  - 2) Once the motion has been filed with the court, *Judgment Decree Closed* must be entered as an action in the Case Screen.



## **CHAPTER 8: PENALTY DETERMINATIONS**

ADEQ will determine what constitutes an appropriate settlement penalty on a case-by-case basis, but once a civil complaint seeking penalties has been filed, there will be no settlement without the payment of a significant penalty. In general, the penalty must recapture any identifiable economic gain, and have a deterrent impact on the responsible party. The environmental statutes administered by ADEQ generally contain penalty assessment criteria that a court must consider in determining an appropriate penalty at trial or a hearing. The criteria described below have been developed with these statutory criteria in mind and are used by ADEQ when establishing an appropriate settlement penalty. Not all criteria will be applicable in each situation. In addition, an appropriate settlement may include a penalty mitigation for implementation of a Supplemental Environmental Project (SEP). Although there is no minimum amount for any given penalty, the penalty must recapture any economic gain. The settlement penalty must be reasonably proportionate to the statutory maximum civil penalty. Furthermore, the penalty amount claimed in a civil complaint will be the statutory maximum penalty.<sup>1</sup>

The weight given to each factor described below will be determined by the individual program either on a case-by-case basis, or through the development of program-specific guidance. Several programs have developed such penalty calculation guidance. These guidance documents have been included as appendices:

### **Appendix:**

| <b>Program</b>                         | <b>Penalty Calculation Appendix</b> |
|--|-------------------------------------|
| Air Quality - General                  | None                                |
| Air Quality - Asbestos                 | None                                |
| Drinking Water - Civil                 | P4                                  |
| Drinking Water - Administrative        | None                                |
| Hazardous Waste - Civil                | P7                                  |
| Hazardous Waste - Civil Administrative | G2                                  |
| LUST Enforcement                       | None                                |
| Solid Waste                            | None                                |
| UST Inspections & Compliance           | None <sup>2</sup>                   |

---

<sup>1</sup>Although ADEQ will always seek the statutory maximum in a civil complaint, ADEQ may find it appropriate to ask for a penalty less than the statutory maximum during the course of a penalty hearing before the court.

<sup>2</sup>UST Inspections & Compliance penalty calculations will be conducted pursuant to U.S. EPA Office of Solid Waste and Emergency Response Directive 9610.12, [\*U.S. EPA Penalty Guidance for Violations of UST Regulations\*](#).

|                         |      |
|-------------------------|------|
| Vehicle Emissions       | None |
| Water Pollution Control | None |
| WQARF                   | None |

### GENERAL INITIAL SETTLEMENT PENALTY OFFER ADJUSTMENT FACTORS

The factors described below are largely based upon the criteria imposed on courts and have been used to develop the program-specific penalty calculation procedures listed above. These factors will also be used on a case-by-case basis by those programs that have not developed a program-specific guidance to determine the first offer of settlement. The calculated first offer of settlement will be part of the Case Development Memorandum sent the Attorney General's Office for the purposes of requesting legal representation in negotiating a civil settlement. The bottom line for settlement will typically be set after considering the General Settlement Criteria described below in consultation with the Attorney Generals' Office.

#### Aggravating Factors

**Seriousness of violation:** includes threat or actual harm to human health and/or the environment and/or ADEQ's regulatory program.

**History of repeated violations:** a history of repeated violations of the same rules or statutes or payment of previous penalties for the same violations or similar violations.

**Record of noncompliance:** a history of violation of other environmental laws and regulations, whether federal, Arizona or local.

**Recalcitrance:** refusal to comply with ADEQ requirements or directives, including deliberate attempts to delay the settlement process by unnecessarily extending negotiations.

**Duration of violation:** the violation has continued over a period of time, with the responsible party's knowledge and no or minimal attempts have been made to correct the violation.

**Other evidence of bad faith:** unique bad faith factors, such as ignoring past efforts to acquaint the responsible party with applicable requirements or acts of willful or gross negligence.

#### Mitigating Factors

**Good faith efforts:** timely corrective action or other evidence of good faith that results in progress towards compliance.

**Fault shared by another responsible party:** if more than one responsible party is responsible for the violation, the penalty may be apportioned based on ADEQ's knowledge of the facts and professional judgment.

**Other mitigating factors:** ADEQ will consider other factors which may indicate the need for a reduction in penalty. For example, conflicting guidance from ADEQ or other regulatory agencies concerning the particular activity may be considered.

#### Deterrence Factors

**Economic impact of the penalty:** the penalty must be sufficiently harsh to deter the responsible party from repeated violations and recapture any identifiable economic gain.



**Deterrence value to other potential responsible parties:** consideration should be given as to whether the penalty will deter other potential responsible parties from similar acts.

#### GENERAL SETTLEMENT CRITERIA

The following settlement criteria are not considered in calculating the initial settlement penalty offer, but should be considered in determining an appropriate final settlement (i.e., the bottom line).

##### Likelihood of Success

In conjunction with advice from the Attorney General's Office, ADEQ should assess its chances of prevailing in litigation and whether ADEQ has a reasonable probability of getting a judgment that is at least as great as the penalties sought.

##### Relevant Judicial Precedent

ADEQ, in conjunction with the Attorney General's Office, should consider judicial precedent to determine penalties assessed by courts under similar circumstances.

##### Ability to Pay Penalty:

The penalty should not bankrupt the responsible party unless the responsible party has demonstrated an inability to remain solvent and finance environmental compliance. As a result, inability to pay may be considered. However, inability to pay must be established by the responsible party through clear and convincing evidence. Furthermore, payment schedules are preferred over a reduction in penalties, but a penalty payment schedule generally should not exceed three years. When a payment schedule is agreed upon, interest should be included. Interest should be at 10% per annum, unless the imposition of that rate would impose an extraordinary hardship upon the responsible party. If the 10% rate would impose such a hardship, a lesser amount may be negotiated.

#### SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

To further ADEQ's goals to protect and enhance public health and the environment, a Supplemental Environmental Project (SEP) may be included in a civil settlement to mitigate a portion of the civil penalty.<sup>3</sup> This Section sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of a SEP is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the use of SEPs.

As described above, ADEQ considers such factors as the economic benefit, the gravity or seriousness of the violation, and prior compliance history when establishing an appropriate settlement penalty. Evidence of a responsible party's commitment and ability to perform a SEP is

---

<sup>3</sup>Stipulated penalties for violations of consent decrees or other settlement agreements may not be mitigated through the use of SEPs.

also a relevant factor that ADEQ will consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a responsible party who agrees to perform an acceptable SEP compared to the responsible party who does not agree to perform a SEP. Although ADEQ encourages the use of SEPs that are consistent with this Section, SEPs may not be appropriate in the settlement of all cases. Although ADEQ may suggest a willingness to consider SEPs as part of settlement and generally describe the criteria for an acceptable SEP, it is the responsible party's responsibility to propose specific SEPs and to demonstrate that the criteria within this Section have been met. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant environmental or public health protection and improvements.

When evaluating a proposed project to determine if it qualifies as a SEP and determining how much penalty mitigation is appropriate, ADEQ will use the following five-step process:

**STEP 1: Ensure that the project meets the basic definition of a SEP**

SEPs are environmentally beneficial projects which a responsible party agrees to undertake in settlement of a penalty action, but which the responsible party is not otherwise legally required to perform. When proposing a SEP, the responsible party must demonstrate to ADEQ that the SEP improves, protects, or reduces a risk to public health, or the environment at large. While in some cases a SEP may provide the responsible party with certain benefits, there must be no doubt that the project primarily benefits public health or the environment. As a result, the project or activity must have been initiated after identification of the violation by ADEQ, and must not otherwise be required by any federal, state or local law or regulation.<sup>4</sup> Furthermore, SEPs cannot include corrective actions that the responsible party must perform to resolve the violations at issue.

**STEP 2: Ensure that the following guidelines are satisfied**

- A SEP must be consistent with the provisions of the statutes that are the basis of the enforcement action.
- All SEPs must advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if any of the following is true:
  - ▶ The project is designed to reduce the likelihood that similar violations will occur in the future; or
  - ▶ The project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or

---

<sup>4</sup>SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future, if the project will result in the facility coming into compliance earlier than the deadline. Such "accelerated compliance" projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

- ▶ The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.
- ADEQ must not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. ADEQ must also not retain authority to manage or administer the SEP. ADEQ may perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement and must have legal recourse if the SEP is not adequately performed.
- The type and scope of each project must be explicitly defined in the signed settlement agreement. The agreement should describe the specific actions to be performed by the responsible party and provide for a reliable and objective means to verify that the responsible party has completed the project in a timely manner. This may require the responsible party to submit periodic reports to ADEQ. A final report certified by an appropriate corporate official and evidencing completion of the SEP and documenting SEP expenditures, should be required. To the extent feasible, the responsible party should be required to quantify the benefits associated with the project and provide ADEQ with a report setting forth how the benefits were measured or estimated. The responsible party must agree that whenever it publicizes a SEP or the results of a SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action. SEPs which require ADEQ review and comment on interim milestone activities, and other complex SEPs may not be appropriate because of the time commitment that must be made on behalf of ADEQ.
- A project cannot be used to satisfy ADEQ's statutory obligation or another state agency's obligation to perform a particular activity. Furthermore, if a state statute prohibits the expenditure of state resources on a particular activity, ADEQ cannot consider projects that would appear to circumvent that prohibition.
- A project must not provide additional resources to support specific activities performed by ADEQ employees or ADEQ contractors.

**STEP 3:** Ensure that the project fits within one (or more) of the designated categories of SEPs. ADEQ has identified seven specific categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category.<sup>5</sup>

1) Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

---

<sup>5</sup>Projects determined to have environmental merit which do not fit within at least one of the seven categories above but that are otherwise fully consistent with all other provisions of this Section, may be accepted with the advance approval of the ADEQ Director.

**Examples:** Epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy.

2) Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through “source reduction”, including any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.) In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water or other materials.

**Examples:** Equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. “In-process recycling” wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

3) Pollution Reduction

If the pollutant or waste stream has already been generated or released, a pollution reduction approach which employs recycling, treatment, containment or disposal techniques may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as “pollution prevention”.

**Examples:** Installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source, out-of-process recycling (i.e., industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site).

4) Environmental Restoration

An environmental restoration project is one which enhances the condition of the ecosystem or immediate geographic area adversely affected. These projects may be used to restore natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. This category also includes any project which improves the overall condition of the ecosystem.

**Examples:** Restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located, the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation), remediation of facilities and buildings, (provided such

activities are not otherwise legally required), removal/mitigation of contaminated materials (such as soils, asbestos and lead paint, which are a continuing source of releases and/or threat to individuals).

5) Assessments and Audits

The assessments and audits described below are potential SEPs under this category if they are not otherwise available as injunctive relief and the responsible party agrees to provide ADEQ with a copy of the report documenting the assessment or audit.

- Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations. Pollution prevention assessments are acceptable as SEPs with or without an implementation commitment by the responsible party.
- Environmental quality assessments are investigations of the condition of the environment at a site regardless of whether the site or facility is owned or operated by the responsible party. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.  
**Examples:** Investigations of levels or sources of contamination in any environmental media at a site, or monitoring of the air, soil, or water quality surrounding a site or facility.
- Environmental compliance audits are independent evaluations of the responsible party's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business or small community.

6) Environmental Compliance Promotion/Research

An environmental compliance promotion or research project provides training, technical support, or information to other members of the regulated community to identify, achieve or maintain compliance with applicable statutory and regulatory requirements, or go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Environmental compliance promotion/research SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements which were violated and where ADEQ has reason to believe that compliance in the sector would be significantly advanced by the proposed project.

**Examples:** Producing a seminar directly related to correcting widespread or prevalent violations within the responsible party's economic sector. Collection of baseline environmental data to be used in research improving, protecting or reducing risks to public health and the environment. Development of new treatment technologies that could be used to reduce the generation, release, or disposal of pollutants beyond legal requirements.

7) Emergency Planning and Preparedness

An emergency planning and preparedness project provides assistance to a responsible local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

**Examples:** Providing computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training to a responsible local emergency response or planning entity

**STEP 4: Determine the appropriate amount of penalty mitigation**

A SEP may be substituted for a portion of the calculated penalty or settlement amount. However, some penalty must be paid. Generally, the net present after-tax cost of the SEP should be the equivalent of twice the remaining unpaid balance of the calculated penalty or settlement amount. Other ratios can be imposed based upon the facts and the type of SEP imposed, but must be approved in advance by ADEQ's Office of Special Counsel.

**STEP 5: Ensure that the project satisfies all of the implementation and other criteria.**

Whether ADEQ decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within ADEQ's discretion. Even though a project appears to satisfy all of the provisions of this Section, ADEQ may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, the responsible party may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the benefits of the proposed SEP).

**Community Input During SEP Development**

In appropriate cases and at the sole discretion of the agency, ADEQ may make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations. The purpose of seeking input from the impacted community is to ensure that a SEP proposed by the responsible party meets the criteria for an acceptable SEP and to determine whether the community would benefit from the SEP. The seeking of input is not intended to solicit new SEPs or to entertain alternative SEP proposals from the community. Community involvement in SEPs may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated. When soliciting community input, ADEQ will follow the guidelines set forth below.

- Community input should be sought only after:
  - ▶ The responsible party has expressed an interest in performing a SEP;
  - ▶ The responsible party has expressed a willingness to seek community input;
  - ▶ ADEQ knows approximately how much money will be available for a SEP; and
  - ▶ Settlement of the enforcement action is likely.

- To solicit input, ADEQ may contact local community organizations, local elected leaders, local chambers of commerce, or other groups.
- To ensure that communities have a meaningful opportunity to participate, ADEQ should provide information about what SEPs are, the opportunities and limits of such projects, the confidential nature of settlement negotiations, and the reasonable possibilities and limitations in the current enforcement action.
- When possible, the name of the responsible party and the status of the action should remain confidential.
- Representatives of community groups must not participate directly in the settlement negotiations due to the confidential nature of settlement negotiations.

#### STIPULATED ~~PENALTIES~~ PENALTIES/LIQUIDATED DAMAGES

Stipulated penalties and/or liquidated damages must be a part of all Consent Orders, Consent Judgments and Consent Decrees signed by ADEQ. That is, if the responsible party violates a requirement of a Consent Order, Consent Judgment or Consent Decree (including a SEP requirement), the party should be required to pay a penalty negotiated in the settlement agreement. The appropriate amount of the stipulated penalty or liquidated damages will be determined on a case-by-case basis and may differ depending on the specific requirements within the settlement agreement, but must be explicitly described in the settlement document.

**Policy:** The Civil Penalty Policy can be found as Appendix P2.

## **CHAPTER 9: ENFORCEMENT APPROVAL PROCEDURES**

ADEQ will follow the following approval procedures when issuing both informal and formal enforcement documents. When expedited action is needed, though, the Division Director or Regional Director may obtain the Director's verbal approval of the initiation or settlement of a formal enforcement action. The Division Director or Regional Director should send a brief e-mail confirming the approval to the Director, Deputy Director, Enforcement Coordinator, and manager responsible for taking the action or finalizing the settlement. Nevertheless, initiation or settlement of a formal enforcement action may not occur until the Director's approval has been obtained via a signature on the Enforcement Action/Settlement Approval form or an e-mail from the appropriate Division Director or Regional Director confirming the Director's approval.

**Appendix:** The Summary of Enforcement Approval Procedures - Phoenix Office can be found as Appendix M8.

**Appendix:** The Summary of Enforcement Approval Procedures - Regional Offices can be found as Appendix M9.

**Boilerplate:** The boilerplate Enforcement Action/Settlement Approval Form can be found as Appendix B39.

### NOTICE OF OPPORTUNITY TO ~~CORRECT~~NOTICE OF VIOLATIONCORRECT (NOC)

After being signed by the inspector (or compliance officer), an NOC ~~or NOV will~~must be routed to the appropriate ~~Unit~~Manager for his or her co-signature.<sup>1</sup>

### NOTICE OF VIOLATION (NOV)/NOTICE OF ENVIRONMENTAL NUISANCE (NEN)

- 1) The NOV or NEN must be routed through the appropriate Unit Manager, through the appropriate Section Manager to the appropriate Division Director for approval.
- 2) Once approved by the Division Director, the NOV or NEN may be signed by the inspector (or compliance officer) and routed to the appropriate Unit Manager for his or her co-signature.<sup>1</sup>

### NOTICE OF VIOLATION CLOSURE LETTER (WITH NO FURTHER ACTION)

- 1) The NOV Closure Letter (with no further action) must be routed through the appropriate Unit Manager, through the appropriate Section Manager, to the appropriate Division Director for approval.
- 2) Once approved by the Division Director, the NOV Closure Letter (with no further action) may be routed to the appropriate Unit Manager for signature.

---

<sup>1</sup>Except for UST Inspection and Compliance NOVs and NOCs that are issued in the field with the signature of the inspector only. NOVs issued in the field by the UST Inspection and Compliance Unit must be submitted to the Waste Programs Division Director who may withdraw the NOV in favor of issuing an NOC.



## CONSENT ORDER

### 1) ~~A~~**Phoenix Office**

- 1) Using the Enforcement Action/Settlement Approval Form, the draft Consent Order must be routed from the appropriate Section Manager, through the appropriate ~~unit manager to the section manager, or in the case of a regional office, through the ADEQ Compliance and Division Director, the~~ Enforcement Coordinator, and the Deputy Director to the regional office manager, for review. Once approved by the section manager or regional office manager Director for approval.
  - 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the draft Consent Order may be sent to the responsible party for review.
  - 23) Once signed by the responsible party, the Consent Order must be routed from the appropriate ~~t~~Unit ~~m~~Manager through the appropriate ~~s~~Section ~~m~~Manager to the appropriate ~~division director, or in the case of a regional office, through the ADEQ Compliance and Enforcement Coordinator to the regional office manager, for signature.~~<sup>2</sup>
- 3) Division Director for signature.
- 4) Once signed by both parties, the Consent Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

### **Regional Offices**

Before drafting a Consent Order, a Regional Office must first discuss with the appropriate Division whether a Consent Order is warranted, and if so, which ADEQ office will be responsible for pursuing the order. The Division Director, in consultation with the Regional Office Director, may: 1) Decide that a Consent Order will not be pursued; 2) Pursue the Consent Order in the Phoenix Office using the procedures described above; or 3) allow the Regional Office to pursue the Consent Order. If the Regional Office is given authorization to pursue the Consent Order, it must follow the following procedures:

- 1) Using the Enforcement Action/Settlement Approval Form, the draft Consent Order must be routed from the Regional Director through the appropriate Division Director, the Enforcement Coordinator, and the Deputy Director to the Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the draft Consent Order may be sent to the responsible party for review.
- 3) Once signed by the responsible party, the Consent Order must be routed from the appropriate manager in the regional office, through the Enforcement Coordinator to the Regional Director, for signature.<sup>2</sup>
- 4) Once signed by both parties, the Consent Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

## COMPLIANCE/ABATEMENT ORDER

### **Phoenix Office**

- 1) ~~A~~Using the Enforcement Action/Settlement Approval Form, the draft Compliance Order or Abatement Order must be routed from the appropriate Section Manager, through the

---

<sup>2</sup>The Regional Directors' authority to sign Consent Orders is limited to those Consent Orders entered pursuant to A.R.S. §§ 49-261, 49-354(B), and 49-461.

appropriate ~~unit manager and section manager to the appropriate d~~Division director, or in the case of a regional office, through the ADEQ Compliance and ~~Director, the~~ Enforcement Coordinator, and the Deputy Director, to the regional office manager, for signature.<sup>3</sup> The Order must be accompanied by a memorandum that describes the rationale for the Order.

- 2) ~~Once signed~~Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the Order may be signed by the appropriate Division Director.
- 3) Once signed by the Division Director, the Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

### **Regional Offices**

Before drafting a Compliance/Abatement Order, a Regional Office must first discuss with the appropriate Division whether a Compliance/Abatement Order is warranted, and if so, which ADEQ office will be responsible for issuing the order. The Division Director, in consultation with the Regional Office Director, may: 1) Decide that a Compliance/Abatement Order will not be issued; 2) Issue the Compliance/Abatement Order from the Phoenix Office using the procedures described above; or 3) allow the Regional Office to issue the Compliance/Abatement Order. If the Regional Office is given authorization to issue the Compliance/Abatement Order, it must follow the following procedures:

- 1) Using the Enforcement Action/Settlement Approval Form, the draft Compliance Order or Abatement Order must be routed from the Regional Director, through the appropriate Division Director, the Enforcement Coordinator, and the Deputy Director to the Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the Order may be signed by the Regional Director.<sup>3</sup>
- 3) Once signed by the Regional Director, the Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

### **COMPLIANCE ORDER WITH CIVIL ADMINISTRATIVE PENALTY**

#### **(Drinking Water)**

The approval procedures for issuing a compliance order with civil administrative penalty under the drinking water program depend on the type of violation, the size/type of the public water system, and the size of the penalty being assessed.

**For missed monitoring and reporting violations associated with public water systems serving less than 500 persons and assessing a penalty of at least: \$3,000 for a Transient, Non-Community System, \$5,000 for a Community Water System, or \$5,000 for a school**

- 1) A Compliance Order with Civil Administrative Penalty must be routed through the appropriate unit manager and the Water Quality Compliance Section Manager to the

---

<sup>3</sup>The ~~r~~Regional ~~office managers'~~Directors' authority to sign Compliance Orders and Abatement Orders is limited to those Orders issued pursuant to A.R.S. §§ 49-261, 49-354(B), and 49-461.

- Water Quality Division Director for signature. The Order must be accompanied by a memorandum that describes the rationale for the Order.
- 2) Once signed, the Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

**For all other violations resulting in a proposed compliance order with civil administrative penalty**

- 1) Using the Enforcement Action/Settlement Approval Form, the draft Compliance Order with Civil Administrative Penalty must be routed from the Water Quality Compliance Section Manager, through the Water Quality Division Director, the Enforcement Coordinator, and the Deputy Director to the Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the Compliance Order with Civil Administrative Penalty may be signed by the Water Quality Division Director.
- 3) Once signed by the Water Quality Division Director, the Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

**LICENSE SUSPENSION or LICENSE REVOCATION**

- 1) Using the Enforcement Action/Settlement Approval Form, the draft License Suspension or License Revocation must be routed from the appropriate Section Manager, through the appropriate unit manager and section manager to Division Director, the Enforcement Coordinator, and the Deputy Director to the Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the Suspension or Revocation may be signed by the appropriate dDivision dDirector for signature. The suspension or revocation must be accompanied by a memorandum that describes the rationale for the suspension or revocation.
- 2) Once signed, the suspension or revocation
- 3) Once signed by the Division Director, the Suspension or Revocation must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

**ORDER ASSESSING A CIVIL PENALTY (for hazardous waste administrative order violations)**

- 1) The draft Order Assessing a Civil Penalty and a Request for Assignment of an Assistant Attorney General memorandum must be sent to the Arizona Attorney General's Office. The Request for Assignment of an Assistant Attorney General memorandum must include a brief explanation of the circumstances of the case along with the calculations made pursuant to the hazardous waste civil penalty guidance. The draft Order Assessing a Civil Penalty and the Request for Assignment of an Assistant Attorney General memorandum must be routed from the Hazardous Waste Inspections and Compliance Unit (HWICU)Section Manager, through the Hazardous Waste Section Manager, the Waste Programs Division Director, and the ADEQ Compliance and Enforcement Coordinator to, and the ADEQ Deputy Director for signature to the Director. A Case Development Memorandum (CDM) is not required.
- 2) After consultation with the Attorney General's Office, the final administrative Order Assessing a Civil Penalty must be routed through the HWICU Hazardous Waste

- Inspections and Compliance Unit Manager, and the Hazardous Waste Section Manager to the Waste Programs Division Director for signature.
- 3) Once signed, the Order Assessing a Civil Penalty must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

#### TERMINATION OF AN ADMINISTRATIVE ORDER

- 1) The Termination of Administrative Order must be routed from the appropriate Unit Manager, through the appropriate Section Manager to the appropriate Division Director or Regional Director<sup>4</sup> for signature.
- 2) Once signed, the Termination of Administrative Order must be routed to the Hearing Administrator in the Office of Special Counsel for entry and distribution.

#### TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION

- 1) A Request for Assignment of an Assistant Attorney General memorandum must be routed from the appropriate ~~u~~Unit ~~m~~Manager, through the appropriate ~~s~~Section ~~m~~Manager, the appropriate ~~d~~Division ~~d~~Director, ~~and the ADEQ Compliance and Enforcement Coordinator,~~ and the Deputy Director to the Director for approval and transmittal to the ADEQ Director Attorney General's Office.
- 2) Within 60 days of the assignment of an Assistant Attorney General a detailed Case Development Memorandum for Filing a Civil Complaint must be routed from the appropriate ~~unit m~~Section Manager, through the appropriate ~~section manager, the appropriate d~~Division ~~d~~Director, ~~and the ADEQ Compliance and Enforcement Coordinator to,~~ and the Department Director Deputy Director to the Director for approval and transmittal to the Attorney General's Office.

#### PERMANENT INJUNCTION/CIVIL PENALTY

The approval process will be based upon whether a negotiated settlement is sought.

##### ***If a negotiated settlement is sought:***

A Case Development Memorandum for Negotiating a Civil Settlement must be routed from the appropriate ~~unit m~~Section Manager, through the appropriate ~~section manager, the appropriate d~~Division ~~d~~Director, ~~and the ADEQ Compliance and Enforcement Coordinator to,~~ and the Department Director Deputy Director to the Director for approval and transmittal to the Attorney General's Office.

##### ***If the filing of a civil complaint prior to settlement is sought with no attempt at negotiations:***

A Request for Assignment of an Assistant Attorney General and a Case Development Memorandum for Filing a Civil Complaint must be routed from the appropriate ~~unit m~~Section Manager, through the appropriate ~~section manager, the appropriate d~~Division ~~d~~Director, ~~and the ADEQ Compliance and Enforcement Coordinator to,~~ and the Department Director Deputy Director to the Director for approval and transmittal to the Attorney General's Office.

---

<sup>4</sup>Regional Directors may terminate only those administrative orders issued by their Regional Office.

**If the filing of a civil complaint prior to settlement is sought after an attempt to negotiate has failed:**

A Case Development Memorandum for Filing a Civil Complaint must be routed from the appropriate ~~u~~Unit ~~m~~Manager, through the appropriate ~~s~~Section ~~m~~Manager, the appropriate ~~d~~Division ~~d~~Director, ~~and the ADEQ Compliance and Enforcement Coordinator to, and the Department Director.~~

Deputy Director to the Director for approval and transmittal to the Attorney General's Office.

### CIVIL SETTLEMENT

The Director's approval must be obtained prior to settling any civil action. Settlement discussions may be held without obtaining advanced approval, but the responsible party must be informed at the outset of negotiations, and when provisional agreement is reached, that no settlement is final until the Director has approved it.

- 1) Using the Enforcement Action/Settlement Approval Form, the draft Consent Judgment or Consent Decree must be routed from the appropriate Section Manager, through the appropriate Division Director, through the Enforcement Coordinator, and the Deputy Director, to the Director for approval.
- 2) Once the Director has signed the Enforcement Action/Settlement Approval Form, the Complaint and Consent Judgment may be signed by the Division Director.

### CRIMINAL REFERRAL

- The Criminal Information Transmittal (CIT) memorandum must be routed ~~from the appropriate unit manager,~~ through the appropriate ~~section m~~Unit Manager ~~and, the appropriate division director to the ADEQ Special Counsel.~~
- ~~Should an expedited criminal referral become necessary due to any of the following, verbal approval for direct contact with~~ Section Manager, the appropriate Division Director, the Enforcement Coordinator, and the Deputy Director to the Director for transmittal to the Attorney General's Office ~~may be obtained from the appropriate section manager, with the CIT memorandum to follow:~~
  - ▶ ~~An ongoing crime or where the taking of samples is time sensitive~~
  - ▶ ~~There is a likelihood that evidence is being destroyed or a witness is being intimidated~~
  - ▶ ~~An informant has called ADEQ and would like to cooperate.~~
- All criminal referrals must be accompanied by a recommendation for a permanent injunction/civil penalty in accordance with the procedures described above (unless there is no underlying civil violation).

**Policy:** The Criminal Information Transmittal Policy can be found as Appendix P6.

### BOARD OF TECHNICAL REGISTRATION REFERRAL

- 1) Documentary materials and a letter justifying the referral must be sent to the designated senior level registrant within the appropriate Division responsible for overall program administration for review and approval.
- 2) Once approved, the senior level registrant must send the documentary materials and letter through the Enforcement Coordinator and the Deputy Director to the ADEQ Special Counsel Director for review and approval.
- 3) Once approved by the Special Counsel Director, the referral letter from the senior level registrant willmay be sent to the Board of Technical Registration along with all documentary materials.

## **CHAPTER 14: SPECIAL ENFORCEMENT CONSIDERATIONS FOR THE UST CORRECTIVE ACTION SECTION**

Although the concepts described in this handbook generally apply to the enforcement activities taken by the LUST Enforcement Unit within the UST Corrective Action Section, several concepts and procedures have had to be modified due to the unique principles governing ADEQ's oversight of the corrective actions required in response to releases from underground storage tanks (USTs). The very nature of UST corrective actions, along with the statutory implications of the State Assurance Fund (SAF) warrant the special enforcement considerations described in this Chapter.

### **UST CORRECTIVE ACTION ISSUES**

Since it typically takes more than 120 days to conduct the corrective actions required in response to a UST release (the maximum time allowed for resolving a violation under an NOV), the UST Corrective Action Section will often enclose a copy of the *Consent Order Negotiation Guidelines* along with a draft Consent Order when issuing an NOV (rather than waiting until a deadline within the NOV is missed). This allows the responsible party to utilize the full amount of time allowed under the NOV to review the terms and conditions of the Consent Order. Entering into a Consent Order also allows the responsible party to preserve its rights to State Assurance Fund reimbursement as described below.

**Guidance:** The Consent Order Negotiation Guidelines can be found as Appendix G1.

**Guidance:** The Underground Storage Tank Corrective Action Section's Addendum to the Consent Order Negotiation Guidelines can be found as Appendix G3.

Although the UST Corrective Action Section does conduct site visits to observe field activities, to become familiar with site orientation, and to collect split samples, it generally does not perform site inspections for the purpose of determining compliance (compliance determinations are usually based on departmental file reviews). As a result, the UST Corrective Action Section ~~does not provide opportunities to correct deficiencies (which are normally reserved for minor violations discovered during the course of an inspection) and~~ is specifically exempted from the inspection procedures described in Chapter 3 (Inspection Procedures) and ADEQ's Inspection Procedures Policy (Appendix P8).<sup>1</sup> ~~Consequently, the UST Corrective Action Section does not keep a list of minor violations and does not issue NOCs. The UST Section does maintain a list of major violations (Appendix L21) that will result in the issuance of a Notice of Violation.~~

---

<sup>1</sup>See Appendix M1.



## STATE ASSURANCE FUND (SAF) ISSUES

### State Assurance Fund (SAF) Reimbursement:

The SAF was established to reimburse individuals for a portion of the costs expended for conducting UST corrective actions. A UST owner or operator that has entered into a Consent Order with ADEQ maintains eligibility for SAF reimbursement. However, pursuant to [A.R.S. § 49-1052\(F\)\(3\)](#), a UST site that is the subject of an enforcement proceeding under [A.R.S. § 49-1013](#) (a final compliance order, a final violated consent order, or a civil complaint<sup>2</sup>) is not eligible for SAF coverage.

### SAF Pre-approval:

Pursuant to [A.R.S. § 49-1053\(C\)](#), an owner or operator may not elect the SAF preapproval process if the corrective action costs included in an application for SAF coverage pertain to a site that is the subject of a Compliance Order or Consent Order.<sup>3</sup> However, provided that all SAF eligibility criteria are met, an owner or operator may elect the SAF preapproval process by submitting an application and work plan to ADEQ for a site that is the subject of an NOV.<sup>4</sup>

In most cases, ADEQ considers submittal of a SAF preapproval application as an acceptable response to an NOV issued for violations requiring UST corrective action.<sup>4</sup> As a result, if the owner or operator submits a complete SAF preapproval application and work plan, ADEQ will close the NOV upon ADEQ's approval of the SAF work plan. ADEQ will explicitly reserve the right to pursue escalated enforcement if the owner or operator fails to achieve compliance pursuant to the work plan developed under the SAF preapproval process. Once approved, ADEQ will monitor the owner or operator's compliance with the SAF work plan and associated schedule. If the work plan is not implemented as approved, ADEQ will initiate unilateral formal enforcement (i.e., a Compliance Order or Civil Referral) according to Chapter 9 (Enforcement Approval Procedures).

**Boilerplate:** The UST Corrective Action ~~boilerplate NOV Closure~~ Compliance Documented Letter (reserving further action) can be found as Appendix B27.

Additional guidance regarding the effects of the SAF upon the Consent Order negotiation process, can be found in the Underground Storage Tank Corrective Action Section Addendum to *Consent Order Negotiation Guidelines* which can be found as Appendix G3.

---

<sup>2</sup>Under [A.R.S. § 49-1052\(F\)\(3\)\(a\)](#), a court may determine that withholding payment from the SAF is an appropriate sanction.

<sup>3</sup>The SAF pre-approval rules ([A.A.C. R18-12-607.01 et. seq.](#)) do not apply to corrective action expenses incurred under a judicial or administrative order.

<sup>4</sup>This does not apply for to an NOV issued for violation of an administrative order (e.g., a Consent Order).



### Administrative Order Violations

ADEQ considers violation of a Consent Order or Compliance Order that is administered by the UST Corrective Action Section as Penalty Non-Compliance (PNC). Once discovered by ADEQ, the UST Corrective Action Section will ~~issue~~ prepare for approval by the Waste Programs Division Director, a Notice of Violation (NOV) to be sent to the owner or operator regarding the violation. The cover letter to the NOV will state that the NOV does not constitute a final administrative decision under [A.R.S. § 49-1052\(F\)\(3\)\(c\)](#). The UST Corrective Action Section will consider the owner or operator's response to the NOV when deciding whether to render an administrative decision withholding payment from the SAF for those cost that are the direct subject of the violation of a Consent Order (when the owner or operator submits a request for payment). As is normally the case, will reserve the right to pursue civil enforcement, including penalties, regardless of the issuance of, or response to, the NOV. There is no requirement that the UST Corrective Action Section first send an NOV before issuing an appealable Administrative Decision Finding Violation of Consent Order and Withholding Payment from the State Assurance Fund.

**Boilerplate:** The boilerplate Notice of a Violation can be found as Appendix B18.

**Boilerplate:** The UST Corrective Action Section boilerplate Consent Order Notice of Violation cover letter language can be found as Appendix B28.

**Boilerplate:** The boilerplate Administrative Decision Finding Violation of Consent Order and Withholding Payment from the State Assurance Fund can be found as Appendix B29.

Pursuant to [A.R.S. § 49-1052\(F\)\(3\)\(c\)](#), ADEQ may withhold up to 25% of the eligible costs incurred for activities performed to cure violations that gave rise to a Compliance Order or violations of a Consent Order effective after November 1, 2000. In determining whether a reduction in SAF reimbursement is appropriate for a Compliance Order or violated Consent Order, the UST Corrective Action Section will use the adjustment factors outlined in the *General Settlement Penalty Offer Adjustment Factors* Section of Chapter 8 (Penalty Determinations), with the modifications described below. The following factors affect the owner or operator's potential reduction in SAF reimbursement for those activities that are performed to cure the violation and that gave rise to the Compliance Order or violated Consent Order:

#### Aggravating Factors:

**Seriousness of provision violated:** includes threat or actual harm to human health and/or the environment and/or impedance of ADEQ's ability to provide adequate regulatory oversight.

**History of violations at the site:** includes any previous reduction in SAF reimbursement at the site pursuant to [A.R.S. § 49-1052\(F\)\(3\)](#).

**Recalcitrance:** continuing failure to comply with the terms and conditions of the subject order.

**Duration of Order violation:** the violation of the Order has continued over a period of time, with the violator's knowledge and no or minimal attempts have been made to correct the violation.

Mitigating Factors:

**Good faith efforts:** timely corrective action or other evidence of good faith that results in progress towards compliance.

**Other mitigating factors:** ADEQ will consider other factors which require a reduction in SAF reimbursement. For example, conflicting guidance from ADEQ or other regulatory agencies concerning the particular activity may be considered.

STATE LEAD CORRECTIVE ACTIONS

If a UST owner or operator fails to comply with a Compliance Order or Consent Order administered by the UST Corrective Action Section, ADEQ may take corrective action with respect to the UST release(s), and recover from the responsible party the costs incurred for conducting corrective action.<sup>5</sup>

---

<sup>5</sup>See [A.R.S. § 49-1017](#).

## **CHAPTER 15: SPECIAL ENFORCEMENT CONSIDERATIONS FOR SPILLS and PARTICIPATION IN THE VOLUNTARY REMEDIATION PROGRAM**

This chapter describes how ADEQ will address spills of pollutants to the environment, regardless of the source. ADEQ may become aware of a spill in a variety of ways, including reports from the responsible party,<sup>1</sup> complaints from the general public, or on its own during the course of a routine inspection or when responding to an emergency. Regardless of how ADEQ becomes aware of a spill, the process for requiring and overseeing cleanup remains the same. Not all spills warrant cleanup or oversight, though. Some spills merely require mitigation of potential harms, while others can be cleaned up without the involvement of ADEQ. The procedures described in this chapter apply to those spills needing remediation and ADEQ oversight.

Once a spill is identified, ADEQ's first priority will be for cleanup in an expeditious manner. Although ADEQ prefers that spills be cleaned up under the Voluntary Remediation Program (VRP), ADEQ can not force a responsible party to participate. If a responsible party chooses not to participate in the VRP, though, ADEQ will aggressively pursue clean up of the spill (and possibly pursue penalties for the spill) under its other authorities (listed in Appendix M7). If a party does choose to participate in the VRP and cleans up the spill to the satisfaction of ADEQ, ADEQ will forgo formal enforcement to require clean up and significantly reduce any civil penalty sought.

Because the ADEQ program that initially becomes aware of a spill is not always the program with the best authority to require clean up of the spill, internal ADEQ referrals are at times necessary and appropriate. The following steps must be taken to make such an internal referral. If the spill potentially constitutes criminal littering or other criminal activity, a criminal information transmittal form should be completed as well.<sup>2</sup> Furthermore, if the spill is causing an immediate and substantial risk to human health and/or the environment, these steps may be modified accordingly to refer the case to the Attorney General's Office for seeking a temporary restraining order or preliminary injunction.<sup>3</sup>

**Appendix:** A table describing the potential Arizona legal authorities/violations associated with a spill can be found as Appendix M7.

---

<sup>1</sup>Spill reporting requirements may be found in a permit issued to the responsible party, and/or in statute/rule (e.g., [A.R.S. § 49-284](#)).

<sup>2</sup>See Chapter 6 (Formal Enforcement Tools) and Chapter 9 (Enforcement Approval Procedures) for a description of when and how to make a criminal referral.

<sup>3</sup>See Chapter 6 (Formal Enforcement Tools) and Chapter 9 (Enforcement Approval Procedures) for a description of when and how to make a referral to the Attorney General's Office for seeking a temporary restraining order or preliminary injunction.

### **STEP 1: Complete the Incident/Spill Report Form**

Immediately after ADEQ becomes aware of a spill that may constitute a violation of Arizona law,<sup>4</sup> an Incident/Spill Report Form should be completed. Although discretionary if an internal ADEQ referral will not be made, an Incident/Spill Report Form must be completed if the program wishes to refer the spill to another program within the agency.

**Boilerplate:** The boilerplate Incident/Spill Report Form can be found as Appendix B30.

### **STEP 2: Submit Incident/Spill Report Form to Compliance and Enforcement Coordinator**

If the ADEQ program made aware of a spill that may constitute a violation does not issue an NOC or NOV, a completed Incident/Spill Report Form must be submitted to the ADEQ Compliance and Enforcement Coordinator with a recommended enforcement program for addressing the spill. The ADEQ Compliance and Enforcement Coordinator will assign a program for initiating enforcement, but only after consulting with the manager of the program to be assigned.

### **STEP 3: Conduct Inspection**

If an inspection of the spill has not already been conducted by ADEQ pursuant to the procedures identified in Chapter 3 (Inspection Procedures), the assigned program must conduct an inspection as described in Chapter 3 as soon as possible before initiating enforcement.<sup>5</sup>

### **STEP 4: Issue Appropriate Compliance Assurance Document**

If the program determines that the spill constitutes Significant Non-Compliance (SNC), it must issue prepare for approval by the appropriate Division Director or Regional Director, a Notice of Violation (NOV) citing the appropriate authority from Appendix M7. When issuing an NOV for a spill needing cleanup, ADEQ will invite the responsible party to participate in the VRP, including a description of the VRP and explicitly stating that full participation in the VRP will result in: (1) Closure of the NOV; and (2) A significant reduction in any penalties sought by ADEQ for the spill.<sup>6</sup> The invitation will be in the cover letter to the NOV, and not in the *Documenting Compliance* provisions of the NOV. The *Documenting Compliance* provisions should still state what the responsible party can do to demonstrate to ADEQ that the violation has been corrected (or that the violation did not occur).

---

<sup>4</sup>Not all spills constitute a violation (e.g., underground storage tank releases alone do not constitute a violation). Regardless of whether a spill constitutes a violation, though, an Incident/Spill Report Form must be completed if the spill is going to be referred to another program within the agency.

<sup>5</sup>If substantiation of the spill can not be achieved through an on-site inspection, then an on-site inspection is not necessary.

<sup>6</sup>See A.R.S. § 49-172(B) for a complete list of those activities that do not qualify for participation in the VRP. This list includes: corrective actions at hazardous waste permitted and interim status facilities, corrective actions for a releases from underground storage tanks (unless state assurance fund reimbursement rights are waived), corrective actions required by an administrative order or civil judgment or decree or sought in a civil complaint, and remedial actions at WQARF registry sites, except under certain conditions.

**Boilerplate:** The boilerplate NOV cover letter language for a spill needing cleanup can be found as Appendix B31.

**Boilerplate:** The boilerplate description of the VRP can be found as Appendix B32.

**STEP 5: Determine Appropriate Follow-up Enforcement Activity**

The appropriate follow-up enforcement activity to be taken by ADEQ will be based upon the procedures described in Chapter 7 (Enforcement Escalation Procedures) and whether the responsible party cleans up the spill under the VRP and thus to the satisfaction of ADEQ.

***If the responsible party submits an application for participation in the VRP that is deemed complete by ADEQ and is accepted into the VRP:***

ADEQ will close the NOV, reserving the right to seek a penalty.<sup>7</sup> The ADEQ program that conducted the inspection confirming the spill will continue to issue monthly action update letters citing “awaiting outcome of participation in the Voluntary Remediation Program” until a letter stating that no further enforcement action will be taken as a result of the spill is sent, or a civil complaint is filed.

**Boilerplate:** The boilerplate Action Update Letter can be found as Appendix B1.

**Boilerplate:** The boilerplate NOV Closure Compliance Documented Letter for participation in the VRP (reserving further action) can be found as Appendix B33.

**ICE:** After sending an Action Update Letter, the inspector must enter *Action Update Letter Sent to RP* as an action in either the Inspection Screen or the Case Screen (depending on whether a case has been opened). If an NOV Closure Compliance Documented Letter for participation in the VRP (reserving further action) has been sent, NOV Closure Compliance Documented Letter Sent to RP must be entered as an action in the Case Screen.

***If the responsible party chooses not to submit a complete application for participation in the VRP or is not accepted into the VRP:***

ADEQ will continue normal escalated enforcement as described in Chapter 7 (Enforcement Escalation Procedures), which will include an evaluation whether the violation constitutes Penalty Non-Compliance (PNC) and thus whether ADEQ will seek civil penalties. The calculation of a civil penalty will not be affected by the responsible party’s choice not to participate in the VRP.

***If an approved application for the VRP is terminated by ADEQ or withdrawn by the responsible party:***

ADEQ will pursue formal enforcement, including civil penalties, as described in Chapter 7 (Enforcement Escalation Procedures). The settlement penalty calculations performed pursuant to Chapter 8 (Penalty Determinations) will be for the entire period of time from the spill to

---

<sup>7</sup>Pursuant to [A.R.S. § 49-184\(B\)](#), ADEQ may seek penalties regardless of participation in the VRP.

completion of cleanup activities, including the period of time during which the responsible party participated in the VRP and as allowed by law.

***If ADEQ issues a no further action determination or conditional no further action determination under the VRP and the spill constitutes Penalty Non-Compliance (PNC):***

Any penalties sought by ADEQ in settlement or in a civil complaint will be limited to the number of days from the original spill up to the date the responsible party submitted a complete VRP application (which will most likely be prior to the actual cessation of the violation(s) and thus result in fewer days of violation(s)). ADEQ will further reduce the amount of civil penalties sought in settlement by a meaningful amount, depending on the nature of the spill and the cleanup. The appropriate amount of the reduction will be determined based upon the General Initial Settlement Penalty Offer Adjustment Factors described in Chapter 8 (Penalty Determinations).

The ADEQ program that conducted the inspection confirming the spill will continue to issue monthly action update letters citing “determining appropriate ADEQ response to identified violations” until a letter stating that no further enforcement action will be taken as a result of the spill is sent, or a civil complaint is filed.

***If ADEQ issues a no further action determination or a conditional no further action determination under the VRP and the spill does not constitute PNC:***

ADEQ will issue a letter stating that no further enforcement action will be taken as a result of the spill. ADEQ will also cease issuing agency action update letters.

**ICE:** If a letter stating that no further enforcement action will be taken as a result of the spill has been sent, *Case Closed* must be entered as an action in the Case Screen.

## **CHAPTER 16: PERMIT INSPECTION CHECKLIST DEVELOPMENT PROCESS**

As part of the inspection process described in Chapter 3 (Inspection Procedures), an ADEQ inspector must review and/or develop a checklist prior to conducting an inspection. This chapter describes the process that ADEQ will use to develop a permit inspection checklist as part of the permit issuance process.<sup>1</sup> This chapter applies only to the issuance of new permits and substantive modifications to existing permits (i.e., those permits issued or modified after the adoption of this chapter). For existing permits, the inspector must still develop a checklist based upon the permit before conducting an inspection of the facility.

### **STEP 1: Draft Permit Provided to Inspector**

After a permit has been drafted, but before it is submitted for public notice and comment, the appropriate permitting program manager must provide a copy of the draft permit to the manager of the appropriate compliance/enforcement program for development of a draft permit inspection checklist. A cover memo forwarding the draft permit must indicate a recommended time for review for both the development of the checklist (Step 2) and the approval of the checklist (Step 5) as necessary to assure the applicable licensing time frames are met. The memo must be date-stamped upon receipt by the compliance/enforcement program to ensure that the development of the checklist is performed in a timely manner.

### **STEP 2: Inspector to Develop Draft Checklist**

Once the draft permit is received by the appropriate compliance/enforcement program, a draft inspection checklist must be developed within the time frame proposed by the permitting program. If the proposed time frame can not be met, the respective managers should first attempt to work out a mutually acceptable time frame. If a mutually acceptable time frame can not be agreed upon, the issue should be elevated to the appropriate section manager(s) as soon as possible and ultimately to the appropriate division director if necessary (provided the section manager does not oversee both permitting and compliance/enforcement programs). The appropriate section manager or division director may ultimately decide that the checklist should be developed after issuance of the permit in order to meet licensing time frames or other more important obligations.

The checklist will be developed by an inspector within the appropriate compliance/enforcement program and in accordance with the following:

#### ***For items already listed in the draft permit:***

The draft checklist will include at a minimum all items that are required by the permit and thus

---

<sup>1</sup>Because most permit conditions are standardized, standard permit condition inspection checklists will be developed using standardized permit conditions and made available for the development of facility specific inspection checklists. The development and approval of these standard permit condition inspection checklists should generally follow the process described in this chapter.

would constitute a violation if discovered during the course of an inspection.<sup>2</sup> The checklist must include every permit requirement that can be evaluated either in preparation for, or during the course of, an on-site inspection, but need not contain self-reporting requirements that will be tracked by a computerized system developed by ADEQ (e.g., the Water Compliance and Enforcement Tracking database). Each item on the checklist denoted as a permit requirement must include a citation to the appropriate section of the permit and the legal authority for the permit condition listed in the permit.

***For items not already listed in the draft permit that the inspector would like to include in the checklist:***

The inspector may either: 1) include the item as recommendation in the draft checklist; or 2) propose adding the item as a permit requirement. If the inspector chooses to include the item as a recommendation, it must be noted as such in the checklist. There will be no permit section or citation of authority associated with recommendations. Proposed additions to the permit, though, must include a citation of authority for including the item as a requirement in the permit. Requirements proposed by the inspector will be identified by the lack of a permit section. Every requirement on the draft checklist must specify whether a violation of the requirement is major or minor. When determining whether the violation of the requirement is major or minor, the inspector should review the existing major/minor lists that are appendices to this handbook.<sup>3</sup> Any items included in the checklist that do not cite a requirement of the permit or the authority for the requirement must be specifically denoted as a recommendation.

**STEP 3: Draft Checklist Provided to Permit Writer**

Once developed, the draft checklist must be submitted by the appropriate compliance/enforcement manager to the appropriate permitting program manager for review and approval. The draft inspection checklist must be date-stamped upon receipt by the permitting program to ensure that approval of the checklist is performed within the agreed upon time.

**STEP 4: Permit Writer to Meet with Inspector (If Necessary)**

If the permitting program disagrees with, or has any questions regarding the checklist or any proposed additions to the permit, a meeting between the permit writer, the inspector, and both appropriate program managers should be held to resolve the differences. If the disagreements can not be resolved during such a meeting, the issue(s) should be elevated to the appropriate section manager(s) as soon as possible and ultimately to the appropriate division director if

---

<sup>2</sup>Other items may be included in the checklist as recommendations so long as the checklist clearly denotes the difference between the permit requirements and recommendations.

<sup>3</sup>If there has not been a previous determination as to whether violation of the condition is a major violation, staff must provide the appropriate compliance/enforcement program manager with a recommendation as to whether violation of the condition poses a reasonable probability of material harm to any person, the public health, safety, welfare or the environment or the inability to perform such an assessment as a result of the violation. The appropriate program manager, after consultation with the ADEQ Compliance and Enforcement Coordinator, will make the final determination of the risk associated with violation of the condition. Once the final determination has been made, an appropriate notation must be made on the inspection checklist.



necessary (provided the section manager does not oversee both permitting and compliance/enforcement programs). In addition, the ADEQ Compliance & Enforcement Coordinator may be contacted at any point during the process to assist in resolving disputes.

**STEP 5: Approval of Checklist**

After any disagreements with the draft checklist have been resolved, the checklist will become final and be placed in the facility's compliance file. The checklist will not be part of the permit, but may be provided by the compliance/enforcement program to the facility as a courtesy. Any discrepancies between the checklist and the permit will be resolved in favor of the permit.

# APPENDIX B3



**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Case Development Memorandum**

**CONFIDENTIAL - DO NOT PLACE IN THE PUBLIC FILE**

**Date:** [Date]

**To:** ~~Jacqueline E. Schafer~~ [Department Director], Director  
Arizona Department of Environmental Quality

**Through:** ~~Henry Darwin, Compliance and~~ [Deputy Director], Deputy Director  
Arizona Department of Environmental Quality

**Through:** [Enforcement Coordinator], Enforcement Coordinator  
~~Office~~ Arizona Department of ~~Special Counsel~~ Environmental Quality

**Through:** [Division Director], Director  
[Air Quality/Waste Programs/Water Quality] Division

**Through:** [Section Manager], Manager  
[Appropriate Section] Section

**From:** [Unit Manager], Manager  
[Appropriate Unit] Unit

**Subject:** Case Development Memorandum for Filing a Civil Complaint Against [Name of Responsible Party] for Violations at [Name of Facility]

---

The [Appropriate Unit] requests the Arizona Attorney General's Office file a civil complaint seeking the statutory maximum civil penalty and appropriate injunctive relief against [Name of Responsible Party] for violations of Arizona's [Drinking Water/Water Quality/UST/LUST/Solid Waste/Hazardous Waste/VEI/Air Quality/etc.] requirements at the [Name of Facility]. [Optional: If an Assistant Attorney General has already been assigned to the case, include a statement to that effect.]

**I. CASE HISTORY**

[Provide a detailed description of the relevant history of the case, including any activities that have taken place since the issuance of the Notice of Violation, administrative order, or previous Case Development Memorandum.]

**II. RECOMMENDED DEFENDANT(S)**

[For each defendant, provide the following information based upon the type of defendant. Under most circumstances, this information can be obtained by contacting the Western States Project.

Corporation or Limited Liability Company (LLC)

Name of corporation and any parent corporation  
Address (include the address of the home office, if known)  
State of incorporation  
Name and address of statutory agent  
List known officers and their addresses

Partnership

Name of partnership  
Address  
Names, addresses and phone numbers of general and/or limited partners

Government Agency

Name of Agency  
Address  
Name, address and phone number of agency head

Individual

Name  
Address  
Phone number  
Employment status  
Marital status (if married, include name of spouse)

For each defendant state the reason(s) why ADEQ thinks the defendant is subject to the rules or statutes believed to have been violated. Also, provide any knowledge ADEQ has of the defendant's financial status, including any bankruptcy filings. If providing such financial information, state the source of the information specifically

Where a corporation or partnership is the primary defendant and individual officers or employees of the business entity are requested to be named individually as defendants, state the reason ADEQ thinks such persons should be included as defendants.]

**III. VIOLATIONS AND EVIDENCE**

[For each violation provide the following information:

A. Legal Citation: Brief Legal Description of Violation

1. Facts

[State, in detail, the factual basis for making a claim that the violation was committed by the defendant(s).]

2. Witnesses  
[State the names, addresses, and telephone numbers of any person that has actually witnessed the violation, along with a detailed description of the substance of each witness's observations of the violation.]
3. Persons with Knowledge  
[State the names, addresses of all persons believed to have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the violation.]
4. Documents  
[List and attach all documents that are possessed by ADEQ which may be relevant to the violation or which could lead to the discovery of further information relevant to the violation. List all documents that are not possessed by ADEQ, which may be relevant to the violation or which could lead to the discovery of further information relevant to the violation.]

#### **IV. INJUNCTIVE RELIEF**

[State the specific corrective action(s) to be sought and the time frame for each action. The corrective actions and associated deadlines should be presented in typical compliance order format. If the specific corrective actions that will be sought are unknown, describe in general terms.]

#### **V. PENALTY HISTORY**

[Provide the history of penalties assessed against the facility/company for violation of environmental laws, and the history of penalties for the types of violations at issue in the case. Include at a minimum:

1) Past Penalties assessed against the company for violation of environmental laws in Arizona (any and all environmental media);

2) Past Penalties assessed against the facility for violation of environmental laws (any and all media);

3) Past Penalties assessed in Arizona for the types of violations/facts at issue in the current case; and

4) Past Penalties assessed against the company in other states for violation of environmental laws.]

#### **VI. ADDITIONAL CONSIDERATIONS**

[Provide any additional information that may impact the case. For example, include the necessity for quick action, the need for consultation with the EPA or other agencies, any real or potential political controversy, any evidence problems, any potential defenses, any applicable ADEQ policies, etc.]

#### **VII. PRIORITY**

|        |              |
|--------|--------------|
| Urgent | [12 & Above] |
| High   | [9 - 11]     |
| Medium | [6 - 8]      |
| Low    | [5 & Below]  |

[Low priority referrals should not be made, absent extraordinary circumstances justified in writing to the Office of Special Counsel.]

| <u>Type of Referral</u>    | <u>Points</u> |
|----------------------------|---------------|
| Civil action - enforcement | 4             |

Time Sensitivity of Referral: [Maximum of 3 Categories with a score greater than 0]

|  |       |
|--|-------|
| Immediate threat or actual harm to public health/environment | [0-5] |
| Precedential importance/threat to integrity of program       | [0-5] |
| Recalcitrance/history of noncompliance                       | [0-3] |
| Political urgency  | [0-3] |
| No factors apply   | [0-1] |

Production Time: ["4" represents the quickest turnaround time] [1-4]

## **VIII. ADEQ CONTACT**

ADEQ's contact person for this case is [Contact Name] who may be reached at ~~207-771-~~771-  
[Extension].

# APPENDIX B4



# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

## Case Development Memorandum

**CONFIDENTIAL - DO NOT PLACE IN THE PUBLIC FILE**

**Date:** [Date]

**To:** ~~Jacqueline E. Schafer~~ [Department Director], Director  
Arizona Department of Environmental Quality

**Through:** ~~Henry Darwin, Compliance and~~ [Deputy Director], Deputy Director  
Arizona Department of Environmental Quality

**Through:** [Enforcement Coordinator], Enforcement Coordinator  
Office Arizona Department of Special Counsel Environmental Quality

**Through:** [Division Director], Director  
[Air Quality/Waste Programs/Water Quality] Division

**Through:** [Section Manager], Manager  
[Appropriate Section] Section

**From:** [Unit Manager], Manager  
[Appropriate Unit] Unit

**Subject:** Request for Assignment of an Assistant Attorney General for Negotiating a Civil Settlement with [Name of Responsible Party] for violations at [Name of Facility]

---

The [Appropriate Section] requests that an Assistant Arizona Attorney General represent ADEQ in negotiating a civil settlement with [Name of Responsible Party] for violations of Arizona's [Drinking Water/Water Quality/UST/LUST/Solid Waste/Hazardous Waste/VEI/Air Quality/etc.] requirements at the [Name of Facility].

### **I. CASE HISTORY**

[Provide a brief description of all relevant facts, including any activities that have taken place since the issuance of the Notice of Violation or administrative order. Unless the case is extremely complicated, one or two paragraphs should suffice.]

### **II. RELEVANT FACTS AND ALLEGED VIOLATIONS**

A copy of the Notice of Violation (NOV) which describes the violations that are the basis for



this case has been attached. [Optional: Although not included in the Notice of Violation, ADEQ believes the following violations may have also occurred:

1. **[A.R.S. Citation/A.A.C. Citation/C.F.R. Citation/Permit #/Permit Section/Order #/Order Section/Judgment #/Judgment Section]**  
**[Brief Legal Description of Violation]**

[Factual Description of Violation(s)]

### **III. INJUNCTIVE RELIEF**

[State the specific corrective action(s) that will be sought and the time frame for each action. The corrective actions and associated deadlines should be presented in typical compliance order or consent agreement format. If the specific corrective actions that will be sought are unknown, describe in general terms.]

### **IV. CIVIL PENALTY**

[State the initial penalty offer for settlement. Include a description of the method used to calculate the penalties along with references to any applicable ADEQ or EPA penalty policies. The bottom line settlement should be established after consultation with the Attorney General's Office]

### **V. PENALTY HISTORY**

[Provide the history of penalties assessed against the facility/company for violation of environmental laws, and the history of penalties for the types of violations at issue in the case. Include at a minimum:

1) Past Penalties assessed against the company for violation of environmental laws in Arizona (any and all environmental media);

2) Past Penalties assessed against the facility for violation of environmental laws (any and all media);

3) Past Penalties assessed in Arizona for the types of violations/facts at issue in the current case; and

4) Past Penalties assessed against the company in other states for violation of environmental laws.]

### **VI. ADDITIONAL CONSIDERATIONS**

[Provide any additional information that may impact the case. For example, include the necessity for quick action, the need for consultation with the EPA or other agencies, any real or potential political controversy, any evidence problems, any potential defenses, any applicable ADEQ

policies, etc.]

**VII. PRIORITY**

|        |              |
|--------|--------------|
| Urgent | [12 & Above] |
| High   | [9 - 11]     |
| Medium | [6 - 8]      |
| Low    | [5 & Below]  |

[Low priority referrals should not be made, absent extraordinary circumstances justified in writing to the Office of Special Counsel.]

| <u>Type of Referral</u>    | <u>Points</u> |
|----------------------------|---------------|
| Civil action - enforcement | 4             |

Time Sensitivity of Referral: [Maximum of 3 Categories with a score greater than 0]

|  |       |
|--|-------|
| Immediate threat or actual harm to public health/environment | [0-5] |
| Precedential importance/threat to integrity of program       | [0-5] |
| Recalcitrance/history of noncompliance                       | [0-3] |
| Political urgency  | [0-3] |
| No factors apply   | [0-1] |

|   |       |
|---|-------|
| <u>Production Time:</u> ["4" represents the quickest turnaround time] | [1-4] |
|---|-------|

**VIII. ADEQ CONTACT**

ADEQ's contact person for this case is [Contact Name] who may be reached at ~~207-771-~~771-  
[Extension].

**VIIIX. ATTACHMENTS**

[Identify in a list all attached documents that are relevant to the case. At a minimum, this must include the applicable Notice of Violation and any written correspondence resulting from the NOV.]

# **APPENDIX B10**



**BEFORE THE DIRECTOR OF THE  
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In the Matter of:**

**CONSENT ORDER**

[Name of Facility] located at [Street Address  
of Facility] [City where Facility Located],  
[County where Facility Located], Arizona

**Docket No.** \_\_\_\_\_

[ADEQ Identification Number for Facility]

**To:** [Name of Responsible Party] in [his/her/its] capacity as [owner and/or operator] of [Name  
of Facility] located at [Street Address of Facility], [City where Facility Located], [County where  
Facility Located], Arizona.

**RECITALS**

[Name of Responsible Party] acknowledges that no promise of any kind or nature  
whatsoever, was made to induce [him/her/it] to enter into this Consent Order, and [Name of  
Responsible Party] has done so voluntarily.

[Name of Responsible Party] acknowledges that by entering into this Consent Order, it  
does not resolve any liability it may have for civil penalties for violations of any State or Federal  
environmental law.

By entering into this Consent Order, [Name of Responsible Party] does not admit to any  
civil or criminal liability, or waive any right including but not limited to the assertion of any  
defense available to [Name of Responsible Party] under applicable law. Further, [Name of  
Responsible Party] does not admit, and both the Arizona Department of Environmental Quality  
("ADEQ") and [Name of Responsible Party] retain the right to controvert in any subsequent  
proceeding except a proceeding to implement or enforce this Consent Order, the validity of any  
Findings of Fact or Conclusions of Law contained in this Consent Order.

Initial \_\_\_\_\_

1 The undersigned representative of [Name of Responsible Party] certifies that [he/she] is  
2 fully authorized to execute this Consent Order on behalf of [Name of Responsible Party] and to  
3 legally bind [Name of Responsible Party] to this Consent Order.

4 [Name of Responsible Party] admits to the jurisdiction of the Director of ADEQ.

5 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of  
6 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order.

7 [Name of Responsible Party] consents to the terms and entry of this Consent Order and agrees not  
8 to contest the validity or terms of this Consent Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 A.—The Director of ADEQ has jurisdiction over the subject matter of this action and  
12 is authorized to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") §§§  
13 [49-261, 49-334, 49-354, 49-461, 49-781, 49-812, 49-862, 49-923, 49-964, or 49-1013];

14 ~~—B. The Director of ADEQ has personal jurisdiction over [Name of Responsible~~  
15 ~~Party].~~  
16 and 41-1092.07(F)(5).

17 **II. FINDINGS**

18 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
19 **CONCLUSIONS OF LAW:**

20 A. Findings of Fact

21 [List of facts that are the basis for the Consent Order]

22 B. Conclusions of Law

23 [List of violations, including the legal citations, related to the Findings of Fact]

24 **III. COMPLIANCE SCHEDULE**

25 **THE DIRECTOR HEREBY ORDERS** and [Name of Responsible Party] agrees to comply with  
26 the provisions of this Consent Order as follows:

27 [List of compliance requirements and agreed upon deadlines for completion]

1 **IV. STATUS REPORTS**

2 A. [Name of Responsible Party] agrees to submit a written status report to ADEQ  
3 every thirty (30) calendar days beginning thirty (30) days from the effective date of this Consent  
4 Order, until termination of this Consent Order. Each written status report shall describe what  
5 measures have been taken under Section III, of this Consent Order, and shall certify when  
6 compliance with the requirements of Section III of this Order has been achieved. Each report  
7 shall be accompanied by evidence of compliance including, as appropriate, submittal of  
8 documents, photographs or copies of any other supporting information that [Name of Responsible  
9 Party] deems necessary.

10 B. ADEQ will review the status reports and relay any disputes in writing to [Name  
11 of Responsible Party]. [Name of Responsible Party] shall incorporate all required modifications,  
12 changes or other alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

13 **V. VIOLATIONS OF ORDER**

14 ~~Failure to comply with this Consent Order may subject [Name of Responsible Party] to a~~  
15 ~~judicial enforcement action and civil penalties under~~**ORDER/STIPULATED**

16 **PENALTIES**

17 **A. Under** A.R.S. § [49-262, 49-463, 49-783, 49-861, 49-924, or 49-1013 -- IF NO  
18 AUTHORITY LISTED, OMIT THIS SECTION], **violation of this Consent Order subjects [Name**  
19 **of Responsible Party] to civil penalties of up to [\$ statutory maximum] per day per violation.**  
20 **ADEQ and [Name of Responsible Party] agree that the calculation of civil penalties for violation**  
21 **of this Consent Order would be very difficult.**

22 **B. ADEQ and [Name of Responsible Party] therefore agree that if [Name of**  
23 **Responsible Party] fails to comply with any requirement of this Consent Order, [Name of**  
24 **Responsible Party] shall pay a stipulated penalty pursuant to the schedule below:**

| <u>Period of Failure to Comply</u>            | <u>Penalty Per Day of Violation</u> |
|---|-------------------------------------|
| <u>1<sup>st</sup> to 30<sup>th</sup> day</u>  | <u>[\$] per day per violation</u>   |
| <u>31<sup>st</sup> to 60<sup>th</sup> day</u> | <u>[\$] per day per violation</u>   |

After 60 days [\$] per day per violation

C. Except as otherwise provided herein, stipulated penalties shall begin to accrue on the day that performance is due or that a violation of this Consent Order occurs and shall continue to accrue until correction of the act of noncompliance is completed. Neither issuance by ADEQ nor receipt by [Name of Responsible Party] of a Notice of Violation of the terms and conditions of this Consent Order are conditions precedent to the accrual of stipulated penalties.

D. Stipulated penalty payments shall be made pursuant to a civil settlement (e.g., Consent Judgment) with ADEQ filed in a court of competent jurisdiction. If ADEQ and [Name of Responsible Party] are unable to reach agreement for payment of stipulated penalties under a civil settlement, or if [Name of Responsible Party] fails to make payment of stipulated penalties due under a civil settlement, ADEQ may file a civil action seeking the maximum civil penalty allowed under Federal or State law for violation of this Consent Order.

E. The stipulated penalties required by this Consent Order shall be in addition to other remedies or sanctions available to ADEQ by reason of any failure by [Name of Responsible Party] to comply with the requirements of Federal or State laws. The payment of stipulated penalties shall not relieve [Name of Responsible Party] from compliance with the terms and conditions of this Consent Order or Federal or State laws, nor limit the authority of the State to require compliance with the Consent Order or State law.

## VI. COMPLIANCE WITH OTHER LAWS

A. This Consent Order does not encompass issues regarding releases, contamination, sources, operations, facilities or processes not expressly covered by the terms of this Consent Order, and is without prejudice to the rights of the State of Arizona or [Name of Responsible Party], arising under any federal or Arizona environmental statutes and rules with regard to such issues.

B. Nothing in this Consent Order shall constitute a permit of any kind, or a modification of any permit of any kind, or an agreement to issue a permit of any kind under federal, state or local law, or relieve [Name of Responsible Party] in any manner of [his/her/its]

1 obligation to apply for, obtain, and comply with all applicable permits. Nothing in this Consent  
2 Order shall in any way alter, modify or revoke federal, state, or local law, or relieve [Name of  
3 Responsible Party] in any manner of [his/her/its] obligation to comply with such laws.  
4 Compliance with the terms of this Consent Order shall not be a defense to any action to enforce  
5 any such permits or laws.

## 6 **VII. FORCE MAJEURE**

7 A. [Name of Responsible Party] shall perform all the requirements of this Consent  
8 Order according to the time limits set forth herein, unless performance is prevented or delayed  
9 by events which constitute a *force majeure*. *Force majeure*, for the purposes of this Consent  
10 Order, is defined as any event, arising from causes beyond the control of [Name of Responsible  
11 Party] or its authorized representatives which delays or prevents the performance of any  
12 obligation under this Consent Order and which could not have been overcome or prevented by  
13 [Name of Responsible Party]. The financial inability of [Name of Responsible Party] to comply  
14 with the terms of this Consent Order, shall not constitute a *force majeure*.

15 B. In the event of a *force majeure*, the time for performance of the activity affected  
16 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the  
17 delay caused by the *force majeure*. The time for performance of any activity dependent on the  
18 delayed activity shall be similarly extended. In the event of a *force majeure*, [Name of  
19 Responsible Party] shall notify ADEQ in writing within five (5) calendar days after [Name of  
20 Responsible Party] or [his/her/its] agents become aware of the occurrence. The written notice  
21 provided to ADEQ shall describe in detail the event, the anticipated delay, the measures taken and  
22 to be taken by [Name of Responsible Party] to prevent or minimize delay, and a proposed  
23 timetable under which those measures will be implemented. [Name of Responsible Party] shall  
24 take all reasonable measures to prevent or minimize any delay caused by the *force majeure*.  
25 Failure of [Name of Responsible Party] to comply with any requirements of this paragraph for a  
26 particular event, shall preclude [Name of Responsible Party] from asserting any claim of *force*  
27 *majeure* for that event.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VIII. SITE ACCESS**

ADEQ may at any time, upon presentation of credentials to authorized personnel on duty, enter upon the premises at the Facility for the purpose of observing and monitoring compliance with the provisions of this Consent Order. This right of entry shall be in addition to, and not in limitation of or substitution for, ADEQ's rights under applicable law.

**IX. CORRESPONDENCE**

All documents, materials, plans, notices, or other items submitted as a result of this Consent Order shall be transmitted to the addresses specified below:

To ADEQ:

Arizona Department of Environmental Quality  
[ADEQ Division]  
Attention: [ADEQ Contact and Title]  
1110 West Washington Street  
Phoenix, Arizona 85007-2935  
Telephone: [Telephone Number of ADEQ Contact]

To [Name of Responsible Party]:

[Name of Responsible Party or Designee]  
[Address of Responsible Party or Designee]  
[Telephone Number of Responsible Party or Designee]

Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

**X. RESERVATION OF RIGHTS**

A. This Consent Order is based solely upon currently available information. If additional information is discovered, which indicates that the actions taken under this Consent Order are or will be inadequate to protect human health, safety, or the environment, or to conform with applicable federal or state laws, ADEQ shall have the right to require further action.

B. ADEQ shall have the right: to pursue civil penalties for violations of any and all violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring before entry of this Consent Order; to disapprove of work performed by [Name of Responsible Party] that fails to comply with this Consent Order; to take enforcement action for any and all violations of this

1 Consent Order; and to take enforcement action for any and all violations of A.R.S. Title 49, or  
2 the rules promulgated thereunder, occurring after the entry of this Consent Order.

3 C. With respect to the terms and conditions of this Consent Order, [Name of  
4 Responsible Party] waives all rights to the informal appeals process as described in A.R.S. § 49-  
5 1091, including an informal appeal of an approval, disapproval, or evaluation within the  
6 discretion of ADEQ. [UST ONLY - OMIT IF NOT A UST CONSENT ORDER]

#### 7 **XI. SEVERABILITY**

8 The provisions of this Consent Order are severable. If any provision of this Consent Order  
9 is declared by a court of law to be invalid or unenforceable, all other provisions of this Consent  
10 Order shall remain in full force and effect.

#### 11 **XII. MODIFICATIONS**

12 Any modifications of this Consent Order shall be in writing and must be approved by both  
13 [Name of Responsible Party] and ADEQ.

#### 14 **XIII. EFFECTIVE DATE**

15 The effective date of this Consent Order shall be the date this Consent Order is signed by  
16 ADEQ and [Name of Responsible Party]. If such signatures occur on different dates, the later  
17 date shall be the effective date of this Consent Order.

#### 18 **XIV. PARTIES BOUND**

19 No change in ownership, corporate status, or partnership status relating to the subject  
20 of this Consent Order will in any way alter the responsibilities of [Name of Responsible Party]  
21 under this Consent Order. [Name of Responsible Party] will be responsible, and will remain  
22 responsible, for carrying out all activities required under this Consent Order.

#### 23 **XV. TERMINATION**

24 ———The provisions of this Consent Order shall be deemed satisfied and this Consent Order  
25 shall be terminated upon receipt of written notification from ADEQ that [Name of  
26 Responsible Party] has demonstrated, to the satisfaction of ADEQ, that all of the terms of this  
27 Consent Order have been completed. Any denial of a request for termination from [Name of  
28

Responsible Party] will be in writing and describe which terms of the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the right to terminate this

Consent Order unilaterally at any time for any reason.

Any termination will include a written explanation of the reason(s) for termination.

**ISSUED** this \_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
[Name of Division Director/Regional Office Manager], [Director/Manager]  
[Air Quality/Water Quality/Waste Programs Division/Northern/Southern/Regional Office]  
Arizona Department of Environmental Quality

**CONSENT TO ORDER**

The undersigned, on behalf of [Name of Responsible Party/Facility], hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that [Name of Responsible Party] will abide by the same and waive any right to appeal therefrom.

**DATED** this \_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
[Signatory for Responsible Party]  
[Title of Signatory]

1 **ORIGINAL** of the foregoing Consent Order was filed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_,  
2 with:

3 Lavonne Watkins[Hearing Administrator], Hearing Administrator  
4 Office of Special Counsel  
5 Arizona Department of Environmental Quality  
6 1110 West Washington Street  
7 Phoenix, Arizona 85007-2935

8 **COPY** of the foregoing Consent Order was sent certified mail, return receipt requested, this  
9 \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to:

10 [Name of Responsible Party]  
11 [Address of Responsible Party]  
12

13 **COPIES** of the foregoing Consent Order were sent by regular/interdepartmental mail, this  
14 \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to the following:

15 [Chief Counsel, Environmental Enforcement Section, Office of the Attorney General]

16 [Program Manager(s), ADEQ]

17 [County Health Department]

18 [Environmental Protection Agency]  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **APPENDIX B11**



**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Interoffice Memorandum**

**PRIVILEGED AND CONFIDENTIAL - DO NOT PLACE IN THE**  
**PUBLIC FILE**

**Date:** [Date]

**To:** ~~Steve Burr, Special Counsel~~  
~~Office of Special Counsel~~

**Through:** ~~Henry Darwin, Compliance and~~ [Director], Director

**Through:** [Deputy Director], Deputy Director

**Through:** [Enforcement Coordinator], Enforcement Coordinator  
~~Office of Special Counsel~~

**Through:** [Division Director], Director  
[Air Quality, Waste Programs, Water Quality] Division

**Through:** [Section Manager], Manager  
[Appropriate Section]

**Through:** [Unit Manager], Manager  
[Appropriate Unit]

**From:**

**Subject:** Transmittal of Information Relating to Potentially Criminal Activity

---

**DESCRIPTION OF RELEVANT FACTS:**

[Provide a detailed description of all relevant facts, including why the activity is considered to be potentially criminal.]

**APPLICABLE STATUTES OR RULES:**

[Identify the statutes or rules that are relevant to the situation.]

**ADEQ CONTACT:**

For additional information, please contact [contact name] at [phone number].

# **APPENDIX B15**

[ADEQ Letterhead]

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention First Name] [Attention Last Name]  
[Address]  
[City, State, Zip]

Subject: Opportunity to Correct Deficiencies  
[Facility Name], [Facility Identification Number]  
[Address or other location information]

Dear [Prefix] [Attention Last Name]:

The Arizona Department of Environmental Quality (ADEQ), has reason to believe that [Facility owner/Facility operator] as the owner/operator of [Facility name] may be in violation of Arizona's environmental requirements. The purpose of this letter is to update you on the status of ADEQ action resulting from an ADEQ inspection as required by A.R.S. § 41-1009(H), and to allow you an opportunity to correct these deficiencies without enforcement by ADEQ. An ADEQ inspection of the facility conducted on [Inspection Date] revealed the following:

1. **[A.R.S. Citation/A.A.C. Citation/C.F.R. Citation/Permit #/Permit Section]**  
**[Brief Legal Description of Violation]**

[Factual Description of Violation(s)]

Please review the above and submit a written response within [Number less than 180] calendar days of receipt of this letter to:

Arizona Department of Environmental Quality  
Attention: [ADEQ Contact Name]  
[Unit]  
[Contact Address]

To establish compliance, your response must include the corrective actions that have been taken, along with appropriate documentation. Appropriate documentation includes invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits and any other document necessary to establish that the above deficiencies have been resolved. ADEQ may verify compliance by on-site inspection or other appropriate means. Within 30 days of receipt of your response to this letter, ADEQ will notify you whether the facility is in substantial compliance.



[Facility Name]

[Date]

Page [Page]

ADEQ may initiate enforcement for the above deficiencies if they are not corrected in a timely manner as described within this letter. If these deficiencies are corrected within the time frames in this letter, no enforcement will be taken by ADEQ.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, this letter has no such force or effect. Your point of contact for resolution of these deficiencies will be [ADEQ Contact] who can be reached at [ADEQ Contact Phone Number] . Please contact him/her if you have any questions about this letter or need additional guidance.

Sincerely,

---

[ADEQ Unit Manager], Manager  
[Unit]

---

[ADEQ Contact]  
[Unit]

cc: [cc list]

# **APPENDIX B16**

[ADEQ Letterhead]

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention]  
[Address]  
[City, State, Zip]

Subject: [Facility Name], [Facility Identification Number]  
[Address or other location information]

## **NOTICE OF VIOLATION**

The Arizona Department of Environmental Quality (ADEQ), has reason to believe that [Facility owner/Facility operator] as the owner/operator of [Facility name] has violated Aquifer Protection Permit # [APP Permit #]. The alleged violations listed in the attached table were identified on a Self-Monitoring Report Form (SMRF) received by ADEQ on [SMRF received date].

### **I. DOCUMENTING COMPLIANCE**

1. Within [Number less than 120] calendar days of receipt of this Notice, please submit documentation that the violation never occurred, or [Detailed description of how the facility must either: 1) document that the violation never occurred; or 2) document that compliance has been achieved. Appropriate documentation includes: invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits or any other document(s) necessary to establish compliance.]

### **II. SUBMITTING COMPLIANCE DOCUMENTATION**

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality  
Attention: [ADEQ Contact Name]  
[Unit]  
[Contact Address]

### **III. STATEMENT OF CONSEQUENCES**

Notice of Violation  
[Facility Name]  
[Date]  
Page [Page]

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violations alleged in this Notice as allowed by law.

IV. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact [ADEQ Contact Name] at [ADEQ Contact Phone Number].

---

[ADEQ Unit Manager], Manager  
[Unit]

Attachment

# **APPENDIX B17**

[ADEQ Letterhead]

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention]  
[Address]  
[City, State, Zip]

Subject: [Facility Name], [Facility Identification Number]  
[Address or other location information]

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ), has reason to believe that [Facility owner/Facility operator] as the owner/operator of [Facility name], has violated -a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during [an inspection ~~of the facility conducted~~completed on/a file review~~of the facility's file~~ completed on/ a review of a report ~~from the facility~~ received on] [date].

### I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. [A.R.S. Citation/A.A.C. Citation/C.F.R. Citation/Permit #/Permit Section/Order #/Order Section/Judgment #/Judgment Section]  
[Brief Legal Description of Violation]

[Factual Description of Violation(s)]

### II. LEGAL AUTHORITY and NATURE OF OTHER ALLEGED VIOLATION(S)

1. [A.R.S. Citation/A.A.C. Citation/C.F.R. Citation/Permit #/Permit Section]  
[Brief Legal Description of Violation]

[Factual Description of Violation(s)]

### III. DOCUMENTING COMPLIANCE

#### Significant Violations

1. Within [Number less than 120] calendar days of receipt of this Notice, please

submit documentation that the violation never occurred, or [Detailed description of how the facility must either: 1) document that the violation never occurred; or 2) document that compliance has been achieved. Appropriate documentation includes: invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits or any other document(s) necessary to establish compliance.]

#### Other Violations

2. Within [Number less than 180] calendar days of receipt of this Notice, please submit a written response describing the corrective actions that have been taken to resolve the violations alleged in Section II, along with appropriate documentation. Appropriate documentation includes invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits and any other document necessary to establish that the violations have been resolved.

#### IV. SUBMITTING COMPLIANCE DOCUMENTATION

1. Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality  
Attention: [ADEQ Contact Name]  
[Unit]  
[Contact Address]

2. Within 30 calendar days of receipt of the compliance documentation for the violation(s) alleged in Section II of this Notice, ADEQ will provide written notification as to whether the associated violation(s) have been corrected.

#### V. STATEMENT OF CONSEQUENCES

---

---

##### Significant Violations

1. The time frames within this Notice for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice are firm limits. Failure to achieve or document compliance for the violation(s) alleged in Section I of this Notice within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time

frames for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.

2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in Section I of this Notice as allowed by law.

Other Violations

3. ADEQ may take any enforcement action authorized by law for the violation(s) alleged in Section II of this Notice, if the violation(s) are not corrected, or if ADEQ determines that the violation(s) have not been corrected in the time frames within this Notice.

VI. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact [ADEQ Contact Name] at [ADEQ Contact Phone Number].

---

[ADEQ Unit Manager], Manager  
[Unit]

---

[ADEQ Contact]  
[Unit]



# **APPENDIX B18**

[ADEQ Letterhead]

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention]  
[Address]  
[City, State, Zip]

Subject: [Facility Name], [Facility Identification Number]  
[Address or other location information]

## NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ), has reason to believe that [Facility owner/Facility operator] as the owner/operator of [Facility name], has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during [an inspection ~~of the facility conducted~~completed on/a file review ~~of the facility's file~~ completed on/a review of a report from the facility received on] [date].

### I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

1. [A.R.S. Citation/A.A.C. Citation/C.F.R. Citation/Permit #/Permit Section/Order #/Order Section/Judgment #/Judgment Section]  
[Brief Legal Description of Violation]

[Factual Description of Violation(s)]

### II. DOCUMENTING COMPLIANCE

1. Within [Number less than 120] calendar days of receipt of this Notice, please submit documentation that the violation never occurred, or [Detailed description of how the facility must either: 1) document that the violation never occurred; or 2) document that compliance has been achieved. Appropriate documentation includes: invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits or any other document(s) necessary to establish compliance.]

### III. SUBMITTING COMPLIANCE DOCUMENTATION

Notice of Violation  
[Facility Name]  
[Date]  
Page [Page]

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality  
Attention: [ADEQ Contact Name]  
[Unit]  
[Contact Address]

IV. STATEMENT OF CONSEQUENCES

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violations alleged in this Notice as allowed by law.

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact [ADEQ Contact Name] at [ADEQ Contact Phone Number].

---

[ADEQ Unit Manager], Manager  
[Unit]

---

[ADEQ Contact]  
[Unit]

# **APPENDIX B20**

[ADEQ Letterhead]

[Date]

Case ID #:[Case ID #]

[Facility Owner/Facility Operator]

Attention: [Attention First Name] [Attention Last Name]

[Address]

[City, State, Zip]

Subject: Closure of the [NOV Issue Date] Notice of Violation issued on [NOV Issue Date]  
Compliance Documented

Dear [Prefix] [Attention Last Name]:

~~The~~ This letter constitutes a monthly update on the status of Arizona Department of  
Environmental Quality (ADEQ), has closed action resulting from ADEQ's inspection of the  
above-referenced site on [Inspection Date], as required by A.R.S. § 41-1009(H).

Based upon [a file review conducted on/a review of the information submitted on/a follow-up  
inspection conducted on] [date], ADEQ has determined that the *Documenting Compliance*  
provisions of the Notice of Violation (NOV) issued to [Facility Owner/Facility Operator] on  
[NOV Issue Date]. ADEQ has closed the NOV based upon its determination that [Facility  
Owner/Facility Operator] has met the *Documenting Compliance* have been met.

Even though the *Documenting Compliance* provisions of the NOV. Although the NOV has ve  
been closedmet, ADEQ reserves the right to take additional action, including seeking civil  
penalties for the violations alleged in the NOV. ADEQ will continue to keep you informed about  
whether it will pursue further action through monthly action update letters.

Should you have any comments or questions regarding this matter, please do not hesitate to  
contact me at [ADEQ Unit Manager Phone Number].

Sincerely,

[ADEQ Unit Manager], Manager  
[Unit]

cc: [cc list]

# APPENDIX B21

**To be included in the cover letter to a Notice of Violation:**

**This letter constitutes the monthly update on the status of Arizona Department of Environmental Quality (“ADEQ”) action resulting from ADEQ’s inspection of the above-referenced site on [Inspection Date], as required by A.R.S. § 41-1009(H).**

The attached Notice of Violation (“NOV”) is an informal compliance assurance tool used by ~~the Arizona Department of Environmental Quality (“ADEQ”)~~ADEQ to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an environmental requirement has occurred. It describes the facts known to ADEQ at the time of issuance and cites the requirement that ADEQ believes the party has violated.

Although ADEQ has the authority to issue appealable administrative orders compelling compliance, an NOV has no such force or effect. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected.

ADEQ reserves the right to take a formal enforcement action, such as issuing an administrative order or filing a civil lawsuit, regardless of whether the Department has issued an NOV. Neither ADEQ’s issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

=

# **APPENDIX B22**



[ADEQ Letterhead]

---

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention First Name] [Attention Last Name]  
[Address]  
[City, State, Zip]

Subject: Missed Notice of Violation Deadline  
[Facility Name], [Facility Identification Number]  
[Address or other location information]

Dear [Prefix] [Attention Last Name]:

The purpose of this letter is to update you on the status of ADEQ action resulting from an Arizona Department of Environmental Quality (ADEQ) inspection conducted on [Inspection Date] as required by A.R.S. § 41-1009(H), and to request an informal meeting to discuss the unresolved violations alleged by the Arizona Department of Environmental Quality (ADEQ) in a Notice of Violation (NOV) dated [NOV Date] and received by you on [NOV Receipt Date]. ADEQ is asking for this meeting because the department has yet to receive the following compliance documentation as requested in the NOV:

|    | <u>Compliance Documentation</u>        | <u>Date Due</u> |
|----|--|-----------------|
| 1. | [Compliance Documentation Requirement] | [Due Date]      |

ADEQ's Consent Order Negotiation Guidelines have been enclosed for your review. These guidelines describe ADEQ's administrative enforcement process, including the various options and deadlines for demonstrating compliance. ADEQ will be happy to answer any questions you have about this process during our meeting.

Please contact [ADEQ Contact Name] of my staff, at [ADEQ Contact Phone Number] immediately upon receipt of this letter to schedule a meeting. ADEQ still hopes to resolve these alleged violations with your input, but failing to contact ADEQ will result in the issuance of an administrative order requiring compliance within time frames specified by ADEQ.

Sincerely,

---

[ADEQ Unit Manager], Manager  
[Unit]

Enclosure

cc: [cc list]

# **APPENDIX B23**



# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

## NOTICE OF INSPECTION RIGHTS

| FACILITY INFORMATION                    | ADEQ INFORMATION                          |
|---|---|
| <b>Facility Name (Customer):</b> _____  | <b>Date of Inspection:</b> ____/____/____ |
| <b>Facility Location (Place):</b> _____ | <b>County:</b> _____                      |
| <b>Mailing Address:</b> _____           | <b>Inspector:</b> _____                   |
| <b>Responsible Party:</b> _____         | <b>Telephone:</b> _____                   |
| <b>Telephone:</b> _____                 | <b>Accompanied by:</b> _____              |
| <b>On-Site Representative:</b> _____    | <b>ADEQ Follow-up Contact:</b> _____      |
| <b>Title:</b> _____                     | <b>Title:</b> _____                       |
| <b>Telephone:</b> _____                 | <b>Telephone:</b> _____                   |

The ADEQ representative(s) identified above were present at the above address on the above listed date and time. Upon entry to the premises, the ADEQ representative(s) met with me, presented photo identification indicating that they are ADEQ employees and explained:

☐ That the purpose of the inspection is to determine:

[ ] Compliance with Title 49 of the Arizona Revised Statutes, Title 18 of the Arizona Administrative Code\* and/or:

Arizona Revised Statutes: Title \_\_\_\_\_, Chapter \_\_\_\_\_, Article \_\_\_\_\_

Arizona Administrative Code: Title \_\_\_\_\_, Chapter \_\_\_\_\_, Article \_\_\_\_\_

Permit/Agreement Number: \_\_\_\_\_

[ ] Qualification for a license issued pursuant to:

Arizona Revised Statutes: § \_\_\_\_\_

Arizona Administrative Code: R \_\_\_\_\_

☐ That this inspection is conducted pursuant to the authority granted in Arizona Revised Statutes § 49-104(B)(8) and/or:

Arizona Revised Statutes: § \_\_\_\_\_

Arizona Administrative Code: R \_\_\_\_\_

Permit/Agreement Number : \_\_\_\_\_

☐ That the fee for this inspection is: \_\_\_\_\_

\*The Arizona Revised Statutes (A.R.S.) can be found on the internet at: [www.azleg.state.az.us/ars/arsus/ArizonaRevisedStatutes.htm#asp](http://www.azleg.state.az.us/ars/arsus/ArizonaRevisedStatutes.htm#asp) while the Arizona Administrative Code (A.A.C.) can be found at [www.sosaz.com/public\\_services/Table\\_of\\_Contents.htm](http://www.sosaz.com/public_services/Table_of_Contents.htm)

While I have the right to refuse to sign this form, the ADEQ representatives may still proceed with the inspection

[ ] I have read both sides of this notice and discussed any questions or concerns with the ADEQ representatives.

\_\_\_\_\_  
Signature of Regulated Person or Authorized On-Site Representative

\_\_\_\_\_  
Date

[ ] The regulated person or authorized on-site representative refused to sign.

\_\_\_\_\_  
Name of Regulated Person or Authorized On-Site Representative

\_\_\_\_\_  
Title

[ ] The regulated person or an authorized on-site representative was not present at the facility.

\_\_\_\_\_  
Signature of ADEQ Representative

\_\_\_\_\_  
Date

## INSPECTION RIGHTS

- ☐ I understand that I can accompany the ADEQ representative(s) on the premises, except during confidential interviews.
- ☐ I understand that I have right to:
  - Copies of any original documents taken during the inspection, and that ADEQ will provide copies of those documents at ADEQ's expense.
  - A split of any samples taken during the inspection, if the split of the samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
  - Copies of any analysis performed on samples taken during the inspection and that ADEQ would provide copies of this analysis at ADEQ's expense.
- ☐ I also understand that:
  - Each person interviewed during the inspection must be informed that statements made by the person may be included in the inspection report.
  - Each person whose conversation is tape recorded during the inspection must be informed that the conversation is being tape recorded.
  - If an administrative order is issued or a permit decision is made based on the results of the inspection, I have the right to appeal that administrative order or permit decision. I understand that my administrative hearing rights are set forth in Arizona Revised Statutes § 41-1092 *et seq.* and my rights relating to an appeal of a final agency decision are found in Arizona Revised Statutes § 12-901 *et seq.*
  - If I have any questions or concerns about this inspection, I may contact the person listed as the ADEQ Follow-up Contact on the front of this form; ADEQ's Ombudsman at (602) 771-4881 (toll free inside Arizona at (800) 234-5677, extension, 771-4881); or I may contact the Arizona Ombudsman-Citizens' Aid office at (602) 277-7292 or (toll free at (800) 872-2879).
  - If I have any questions concerning my rights to appeal an administrative order or permit decision, I may contact ADEQ's Office of Special Counsel at (602) 771-2212 or (toll free inside Arizona at (800) 234-5677, extension 2212-771-2212).

# APPENDIX B24



**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Interoffice Memorandum**

**CONFIDENTIAL - DO NOT PLACE IN PUBLIC FILE**

**Date:** [Date]

**To:** ~~Jacqueline E. Schafer, Director~~

**Through:** ~~Steve Burr~~ [Department Director], Director

**Through:** [Department Deputy Director], Deputy Director

{Non-Enforcement Related:

**Through:** [ADEQ Special Counsel], Special Counsel  
Office of Special Counsel}

{Enforcement Related:

**Through:** [ADEQ C & E Coordinator], Compliance and Enforcement Coordinator  
Office of Special Counsel}

**Through:** [Appropriate Division Director], Director  
~~[Air Quality/Water]~~ [Air Quality/Water] Quality/Waste Programs] Division

**Through:** [Appropriate Section Manager], Manager  
[Appropriate Section] Section

**From:** [Appropriate Unit Manager], Manager  
[Appropriate Unit] Unit

**Subject:** Request for Assignment of an Assistant Attorney General

---

**DESCRIPTION OF FACTS**

[Provide a brief description of all relevant facts. Unless the situation is extremely complicated, one or two paragraphs should be sufficient.]

**APPLICABLE STATUTES OR RULES**

[Identify the statutes or rules that are relevant to the situation.]

**JUSTIFICATION FOR ASSIGNMENT**

[State the basis for requiring AAG assistance. If an emergency assignment is necessary please describe all relevant facts.]

### **PRIORITY**

[Provide the appropriate Priority and Category based upon the following:

| <u>Priority</u> | <u>Category</u> |
|-----------------|-----------------|
| 12 & Above      | Urgent          |
| 9 - 11          | High            |
| 6 - 8           | Medium          |
| 5 & Below       | Low             |

*All requests for representation at administrative hearings, which are handled by the Office of Special Counsel, will receive a point score of "12".*

*Low priority referrals should not be made, absent extraordinary circumstances justified in writing to the Office of Special Council*

Determine the Priority by adding the points for the Type of Referral, the Time Sensitivity of Referral and the Production Time.

| <u>Type of Referral: (One Category Only)</u>   | <u>Points:</u> |
|--|----------------|
| Civil action enforcement   | 4              |
| Defending ADEQ in environmental litigation   | 4              |
| Legislative negotiations   | 3              |
| Attendance at negotiations meeting with regulated party represented by outside counsel | 3              |
| Attendance at internal ADEQ meeting  | 2              |
| Representation of ADEQ employee at deposition/trial                                    | 2              |
| Rule review  | 2              |
| IGA/Contract approvals   | 2              |
| Written advice   | 1              |
| Bankruptcy representation  | 1              |
| Other  | 1              |

| <u>Time Sensitivity of Referral: (Maximum of 3 Categories)</u>                                      |     |
|---|-----|
| Immediate threat or actual harm to public health/environment  | 1-5 |
| Precedential importance/threat to integrity of program/<br>potential threat of legal/tort liability | 1-5 |
| Statutory/rule deadline requiring response in less than 30 days                                     | 4   |
| Recalcitrance/history of noncompliance  | 1-3 |
| Political urgency   | 1-3 |
| No factors apply  | 1   |

Production Time: ("4" represents the quickest turnaround time)

1-4]

**ADEQ CONTACT**

For additional information concerning this case, please contact [contact name] at [phone number].

Attachments: [List all documents relevant to the situation that have been attached]



# **APPENDIX B27**

[ADEQ Letterhead]

[Date]

Case ID #:[Case ID #]

[Facility Owner/Facility Operator]

Attention: [Attention First Name] [Attention Last Name]

[Address]

[City, State, Zip]

Subject: Closure of the [NOV Issue Date] Notice of Violation issued on [NOV Issue Date]  
Compliance Documented

Dear [Prefix] [Attention Last Name]:

The Arizona Department of Environmental Quality (ADEQ) has ~~closed~~ determined that the Documenting Compliance provisions of the Notice of Violation (NOV) issued to [Facility Owner/Facility Operator] on [NOV Issue Date]. ~~ADEQ has closed the NOV due to the~~ have been met by submittal and approval of a State Assurance Fund Preapproval application and work plan. –

~~Although~~ Even though the Documenting Compliance provisions of the NOV has ~~ve~~ been ~~closed~~ met, ADEQ reserves the right to take additional action, including seeking civil penalties for the violations alleged in the NOV. Furthermore, if compliance is not achieved through the preapproval process, ADEQ may initiate formal enforcement, including the issuance of a unilateral order requiring compliance within a reasonable time specified by ADEQ, or by filing of a civil action in superior court.

Should you have any comments or questions regarding this matter, please do not hesitate to contact me at [ADEQ Unit Manager Phone Number].

Sincerely,

---

ADEQ Unit Manager], Manager  
[Unit]

cc: [cc list]

# APPENDIX B33

[ADEQ Letterhead]

[Date]

Case ID #:[Case ID #]

[Facility Owner/Facility Operator]

Attention: [Attention First Name] [Attention Last Name]

[Address]

[City, State, Zip]

Subject: ~~Closure of the [NOV Issue Date]~~ Notice of Violation issued on [NOV Issue Date]

Dear [Prefix] [Attention Last Name]:

~~The~~ This letter constitutes a monthly update on the status of Arizona Department of Environmental Quality (ADEQ), ~~has closed~~ action resulting from ADEQ's inspection of the above-referenced site on [Inspection Date], as required by A.R.S. § 41-1009(H).

ADEQ has determined that the Documenting Compliance provisions of the Notice of Violation (NOV) issued to [Facility Owner/Facility Operator] on [NOV Issue Date]. ~~ADEQ has closed the NOV based upon~~ have been met by acceptance of the site into the Voluntary Remediation Program (VRP).

~~Although~~ Even though the Documenting Compliance provisions of the NOV has ~~ve~~ been closed ~~met~~, ADEQ reserves the right to take additional action, including seeking civil penalties for the violations alleged in the NOV. Any penalties sought, though, will be significantly reduced by a no further action determination or conditional no further action determination made under the VRP. Should the approved VRP application be terminated or withdrawn, ADEQ will pursue escalated enforcement, which may include seeking civil penalties with no reduction. ADEQ will continue to keep you informed about whether it will pursue further action through monthly action update letters.

Should you have any comments or questions regarding this matter, please do not hesitate to contact me at [ADEQ Unit Manager Phone Number].

Sincerely,

---

ADEQ Unit Manager], Manager  
[Unit]

cc: [cc list]

# APPENDIX B34

[ADEQ Letterhead]

CERTIFIED MAIL  
Return Receipt Requested

Case ID #:[Case ID #]

[Date]

[Facility Owner/Facility Operator]  
Attention: [Attention]  
[Address]  
[City, State, Zip]

Subject: [Facility Name], [Facility Identification Number]  
[Address or other location information]

## **NOTICE OF VIOLATION**

The Arizona Department of Environmental Quality (ADEQ), has reason to believe that [Facility owner/Facility operator] as the owner/operator of [Facility name] has violated Aquifer Protection Permit # [APP Permit #]. ADEQ did not receive the [Reporting Frequency] Self-Monitoring Report Form (SMRF) within 30 days after the date due, which was [SMRF due date].

### **I. DOCUMENTING COMPLIANCE**

1. Within [Number less than 120] calendar days of receipt of this Notice, please submit documentation that the violation never occurred or, [Detailed description of how the facility must either: 1) document that the violation never occurred; or 2) document that compliance has been achieved. Appropriate documentation includes: invoices, photographs, logs, laboratory analyses, sealed engineering plans, technical drawings, permits or any other document(s) necessary to establish compliance.]

### **II. SUBMITTING COMPLIANCE DOCUMENTATION**

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality  
Attention: [ADEQ Contact Name]  
[Unit]  
[Contact Address]

### **III. STATEMENT OF CONSEQUENCES**

Notice of Violation  
[Facility Name]  
[Date]  
Page [Page]

1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative order or civil action requiring compliance within a reasonable time frame, –substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violations alleged in this Notice as allowed by law.

IV. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact [ADEQ Contact Name] at [ADEQ Contact Phone Number].

---

[ADEQ Unit Manager], Manager  
[Unit]

# **APPENDIX B35**





**BEFORE THE DIRECTOR OF THE  
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In the Matter of:**

[Name of Facility] located at [Street Address  
of Facility] [City where Facility Located],  
[County where Facility Located], Arizona

[ADEQ Identification Number for Facility]

**CONSENT ORDER  
WITH CIVIL  
ADMINISTRATIVE PENALTY**

**Docket No.** \_\_\_\_\_

**To:** [Name of Responsible Party] in [his/her/its] capacity as [owner and/or operator] of [Name  
of Facility] located at [Street Address of Facility], [City where Facility Located], [County where  
Facility Located], Arizona.

**RECITALS**

[Name of Responsible Party] acknowledges that no promise of any kind or nature  
whatsoever, was made to induce [him/her/it] to enter into this Consent Order, and [Name of  
Responsible Party] has done so voluntarily.

By entering into this Consent Order, [Name of Responsible Party] does not admit to any  
civil or criminal liability, or waive any right including but not limited to the assertion of any  
defense available to [Name of Responsible Party] under applicable law. Further, [Name of  
Responsible Party] does not admit, and both the Arizona Department of Environmental Quality  
("ADEQ") and [Name of Responsible Party] retain the right to controvert in any subsequent  
proceeding except a proceeding to implement or enforce this Consent Order, the validity of any  
Findings of Fact or Conclusions of Law contained in this Consent Order.

The undersigned representative of [Name of Responsible Party] certifies that [he/she] is  
fully authorized to execute this Consent Order on behalf of [Name of Responsible Party] and to  
legally bind [Name of Responsible Party] to this Consent Order.

Initial \_\_\_\_\_

1 [Name of Responsible Party] admits to the jurisdiction of the Director of ADEQ.

2 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of  
3 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order.

4 [Name of Responsible Party] consents to the terms and entry of this Consent Order and agrees not  
5 to contest the validity or terms of this Consent Order in any subsequent proceeding.

6 **THEREFORE, IT IS HEREBY ORDERED** as follows:

7 **I. JURISDICTION**

8 ~~\_\_\_\_\_ A. \_\_\_\_\_~~ The Director of ADEQ has jurisdiction over the subject matter of this action and  
9 is authorized to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") §  
10 ~~49-354.~~

11 ~~\_\_\_\_\_ B. \_\_\_\_\_~~ ~~The Director of ADEQ has personal jurisdiction over [Name of Responsible~~  
12 ~~Party].~~  
13 §§ 49-354 and 41-1092.07(F)(5).

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**  
16 **CONCLUSIONS OF LAW:**

17 A. Findings of Fact

18 1. [Name of Responsible Party] owns and/or operates [Name of Facility]  
19 located at [Street Address of Facility], [City where Facility Located], [County where Facility  
20 Located], Arizona.

21 [List of facts that are the basis for the Consent Order]

22 B. Conclusions of Law

23 1. [Name of Facility] is a public water system as defined in A.R.S. § 49-  
24 352(B) and A.A.C. R18-4-101.

25 2. [Name of Facility] is a [community/nontransient, noncommunity/transient,  
26 noncommunity] system as defined in A.A.C. R18-4-101.

27

28

3. [Name of Responsible Party], as owner and/or operator of [Name of Facility], is a water supplier as defined in A.A.C. R18-4-101.

[List of violations, including the legal citations, related to the Findings of Fact]

### **III. COMPLIANCE SCHEDULE**

**THE DIRECTOR HEREBY ORDERS** and [Name of Responsible Party] agrees to comply with the provisions of this Consent Order as follows:

[List of compliance requirements and agreed upon deadlines for completion]

### **IV. STATUS REPORTS**

A. [Name of Responsible Party] agrees to submit a written status report to ADEQ every thirty (30) calendar days beginning thirty (30) days from the effective date of this Consent Order, until termination of this Consent Order. Each written status report shall describe what measures have been taken under Section III, of this Consent Order, and shall certify when compliance with the requirements of Section III of this Order has been achieved. Each report shall be accompanied by evidence of compliance including, as appropriate, submittal of documents, photographs or copies of any other supporting information that [Name of Responsible Party] deems necessary.

B. ADEQ will review the status reports and relay any disputes in writing to [Name of Responsible Party]. [Name of Responsible Party] shall incorporate all required modifications, changes or other alterations, as requested by ADEQ, within a reasonable time specified by ADEQ.

### **V. CIVIL ADMINISTRATIVE PENALTY**

A. [Name of Responsible Party] shall pay a civil administrative penalty to the State in the amount of [Narrative Amount] (\$[Numeric Amount]) within [Number of Days] of the effective date of this Consent Order.

B. All payments made to the State under this Consent Order shall be by check made payable to "State of Arizona" and shall be delivered or mailed to:

Mr. Michel D. Clark, Chief Financial Officer  
Arizona Department of Environmental Quality  
1110 West Washington Street

1 Phoenix, Arizona 85007-2935  
2 Attention: Accounts Receivable

3 together with a letter tendering the check. The letter shall identify this Consent Order by the  
4 parties and docket number. A copy of the check shall also be sent to ADEQ pursuant to  
5 Section IX.

6 C. [Name of Responsible Party] shall pay interest and penalties on any amount not  
7 paid by the due date at the rate established pursuant to A.R.S. § 49-113. If [Name of  
8 Responsible Party] fails to pay the full amount of the civil administrative penalty as required  
9 by this Consent Order, ADEQ may terminate this Consent Order and take action to seek  
10 penalties for any and all violations covered by this Consent Order.

#### 11 **VI. COMPLIANCE WITH OTHER LAWS**

12 A. This Consent Order does not encompass issues regarding releases,  
13 contamination, sources, operations, facilities or processes not expressly covered by the terms  
14 of this Consent Order, and is without prejudice to the rights of the State of Arizona or [Name  
15 of Responsible Party], arising under any federal or Arizona environmental statutes and rules  
16 with regard to such issues.

17 B. Nothing in this Consent Order shall constitute a permit of any kind, or a  
18 modification of any permit of any kind, or an agreement to issue a permit of any kind under  
19 federal, state or local law, or relieve [Name of Responsible Party] in any manner of  
20 [his/her/its] obligation to apply for, obtain, and comply with all applicable permits. Nothing  
21 in this Consent Order shall in any way alter, modify or revoke federal, state, or local law, or  
22 relieve [Name of Responsible Party] in any manner of [his/her/its] obligation to comply with  
23 such laws. Compliance with the terms of this Consent Order shall not be a defense to any  
24 action to enforce any such permits or laws.

#### 25 **VII. FORCE MAJEURE**

26 A. [Name of Responsible Party] shall perform all the requirements of this Consent  
27 Order according to the time limits set forth herein, unless performance is prevented or delayed  
28

1 by events which constitute a *force majeure*. *Force majeure*, for the purposes of this Consent  
2 Order, is defined as any event, arising from causes beyond the control of [Name of  
3 Responsible Party] or its authorized representatives which delays or prevents the performance  
4 of any obligation under this Consent Order and which could not have been overcome or  
5 prevented by [Name of Responsible Party]. The financial inability of [Name of Responsible  
6 Party] to comply with the terms of this Consent Order, shall not constitute a *force majeure*.

7 B. In the event of a *force majeure*, the time for performance of the activity  
8 affected by the *force majeure* shall be determined by ADEQ and extended for a period no  
9 longer than the delay caused by the *force majeure*. The time for performance of any activity  
10 dependent on the delayed activity shall be similarly extended. In the event of a *force majeure*,  
11 [Name of Responsible Party] shall notify ADEQ in writing within five (5) calendar days after  
12 [Name of Responsible Party] or [his/her/its] agents become aware of the occurrence. The  
13 written notice provided to ADEQ shall describe in detail the event, the anticipated delay, the  
14 measures taken and to be taken by [Name of Responsible Party] to prevent or minimize delay,  
15 and a proposed timetable under which those measures will be implemented. [Name of  
16 Responsible Party] shall take all reasonable measures to prevent or minimize any delay caused  
17 by the *force majeure*. Failure of [Name of Responsible Party] to comply with any  
18 requirements of this paragraph for a particular event, shall preclude [Name of Responsible  
19 Party] from asserting any claim of *force majeure* for that event.

## 20 **VIII. SITE ACCESS**

21 ADEQ may at any time, upon presentation of credentials to authorized personnel on  
22 duty, enter upon the premises at the Facility for the purpose of observing and monitoring  
23 compliance with the provisions of this Consent Order. This right of entry shall be in addition  
24 to, and not in limitation of or substitution for, ADEQ's rights under applicable law.

## 25 **IX. CORRESPONDENCE**

26 All documents, materials, plans, notices, or other items submitted as a result of this  
27 Consent Order shall be transmitted to the addresses specified below:

1 To ADEQ:

2 Arizona Department of Environmental Quality  
3 Water Quality Division  
4 Attention: [ADEQ Contact and Title]  
5 1110 West Washington Street  
6 Phoenix, Arizona 85007-2935  
7 Telephone: [Telephone Number of ADEQ Contact]

8 To [Name of Responsible Party]:

9 [Name of Responsible Party or Designee]  
10 [Address of Responsible Party or Designee]  
11 [Telephone Number of Responsible Party or Designee]

12 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon  
13 receipt.

#### 14 **X. RESERVATION OF RIGHTS**

15 A. This Consent Order is based solely upon currently available information. If  
16 additional information is discovered, which indicates that the actions taken under this Consent  
17 Order are or will be inadequate to protect human health, safety, or the environment, or to  
18 conform with applicable federal or state laws, ADEQ shall have the right to require further  
19 action.

20 B. ADEQ shall have the right: to disapprove of work performed by [Name of  
21 Responsible Party] that fails to comply with this Consent Order; to take enforcement action  
22 for any and all violations of this Consent Order; and to take enforcement action for any and all  
23 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring after the entry of  
24 this Consent Order.

#### 25 **XI. SEVERABILITY**

26 The provisions of this Consent Order are severable. If any provision of this Consent  
27 Order is declared by a court of law to be invalid or unenforceable, all other provisions of this  
28 Consent Order shall remain in full force and effect.

#### **XII. RELEASE**

Pursuant to A.R.S. § 49-354(G), upon payment of the full amount of the civil administrative penalty in Section V, [Name of Responsible Party] and [its/his/her] past, present, and future directors, officers, members, employees, agents, and successors and assigns are released from any and all civil penalty liability to the State, for the violations covered by this Consent Order.

### **XIII. MODIFICATIONS**

Any modifications of this Consent Order shall be in writing and must be approved by both [Name of Responsible Party] and ADEQ.

### **XIV. EFFECTIVE DATE**

The effective date of this Consent Order shall be the date this Consent Order is signed by ADEQ and [Name of Responsible Party]. If such signatures occur on different dates, the later date shall be the effective date of this Consent Order.

### **XV. PARTIES BOUND**

No change in ownership, corporate status, or partnership status relating to the subject of this Consent Order will in any way alter the responsibilities of [Name of Responsible Party] under this Consent Order. [Name of Responsible Party] will be responsible, and will remain responsible, for carrying out all activities required under this Consent Order.

### **XVI. TERMINATION**

———The provisions of this Consent Order shall be deemed satisfied and this Consent Order shall be terminated upon receipt of written notification from ADEQ that [Name of Responsible Party] has demonstrated, to the satisfaction of ADEQ, that all of the terms of this Consent Order have been completed. Any denial of a request for termination from [Name of Responsible Party] will be in writing and describe which terms of the Consent Order have not been completed to the satisfaction of ADEQ. ADEQ reserves the right to terminate this Consent Order unilaterally at any time for any reason. Any termination will include a written explanation of the reason(s) for termination.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ISSUED** this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
[Name of Division Director], Director  
Water Quality Division  
Arizona Department of Environmental Quality

**CONSENT TO ORDER**

The undersigned, on behalf of [Name of Responsible Party/Facility], hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that [Name of Responsible Party] will abide by the same and waive any right to appeal therefrom.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
[Signatory for Responsible Party]  
[Title of Signatory]



1 **ORIGINAL** of the foregoing Consent Order was filed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_,  
2 with:

3 Lavonne Watkins[Hearing Administrator], Hearing Administrator  
4 Office of Special Counsel  
5 Arizona Department of Environmental Quality  
6 1110 West Washington Street  
7 Phoenix, Arizona 85007-2935

8 **COPY** of the foregoing Consent Order was sent certified mail, return receipt requested, this  
9 \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to:

10 [Name of Responsible Party]  
11 [Address of Responsible Party]  
12

13 **COPIES** of the foregoing Consent Order were sent by regular/interdepartmental mail, this  
14 \_\_\_\_ day of \_\_\_\_\_, 200\_\_, to the following:

15 [Chief Counsel, Environmental Enforcement Section, Office of the Attorney General]

16 [Chief Financial Officer, ADEQ]

17 [Program Manager(s), ADEQ]

18 [County Health Department]

19 [Environmental Protection Agency]  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **APPENDIX B39**

## ENFORCEMENT ACTION/SETTLEMENT APPROVAL

|  | TO  | ACTION          | SIGNATURE  | DATE         |
|--|---|-----------------|--|--------------|
| 1  | [Division or Regional Director]             | Approval        |  |              |
| 2  | Henry R. Darwin,<br>Enforcement Coordinator | Policy Review   |  |              |
| 3  | Patrick Cunningham,<br>Deputy Director      | Approval        |  |              |
| 4  | Stephen A. Owens, Director                  | Approval        |  |              |
| <b>INITIATOR:</b>                                |   | <b>SUBJECT:</b> | <b>TYPE:</b><br>____ New Action<br>____ Settlement | <b>DATE:</b> |
| <b>FACTUAL AND PROCEDURAL BACKGROUND:</b>        |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |
| <b>SUMMARY OF ACTION/SETTLEMENT RECOMMENDED:</b> |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |
| <b>ATTACHMENTS:</b>                              |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |

## ENFORCEMENT ACTION/SETTLEMENT APPROVAL

|  | TO  | ACTION          | SIGNATURE  | DATE         |
|--|---|-----------------|--|--------------|
| 1  | [Division or Regional Director]             | Approval        |  |              |
| 2  | Henry R. Darwin,<br>Enforcement Coordinator | Policy Review   |  |              |
| 3  | Patrick Cunningham,<br>Deputy Director      | Approval        |  |              |
| 4  | Stephen A. Owens, Director                  | Approval        |  |              |
| <b>INITIATOR:</b>                                |   | <b>SUBJECT:</b> | <b>TYPE:</b><br>____ New Action<br>____ Settlement | <b>DATE:</b> |
| <b>FACTUAL AND PROCEDURAL BACKGROUND:</b>        |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |
| <b>SUMMARY OF ACTION/SETTLEMENT RECOMMENDED:</b> |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |
| <b>ATTACHMENTS:</b>                              |   |                 |  |              |
| <br><br><br><br>                                 |   |                 |  |              |

# APPENDIX M8

## SUMMARY OF ENFORCEMENT APPROVAL PROCEDURES – PHOENIX OFFICE

|  | Unit<br>Manager | Section<br>Manager | Division<br>Director | Enforcement<br>Coordinator | Deputy<br>Director | Director       |
|--|-----------------|--------------------|----------------------|----------------------------|--------------------|----------------|
| Notice of Opportunity to Correct                   | X               |                    |                      |                            |                    |                |
| NOC Closure Letter                                 | X               |                    |                      |                            |                    |                |
| Notice of Violation                                | X               | X                  | X                    |                            |                    |                |
| Notice of Environmental Nuisance                   | X               | X                  | X                    |                            |                    |                |
| NOV Compliance Documented Letter                   | X               |                    |                      |                            |                    |                |
| NOV Closure Letter<br>(w/no further action)        | X               | X                  | X                    |                            |                    |                |
| NOV Reminder Letter                                | X               |                    |                      |                            |                    |                |
| First Draft Consent Order                          | X               | X                  | X                    | X                          | X                  | X              |
| Final Consent Order                                | X               | X                  | X                    |                            |                    |                |
| Compliance/Abatement Order                         | X               | X                  | X                    | X                          | X                  | X              |
| Compliance Order w/Civil<br>Administrative Penalty | X               | X                  | X                    | X <sup>1</sup>             | X <sup>1</sup>     | X <sup>1</sup> |
| Termination of Administrative Order                | X               | X                  | X                    |                            |                    |                |
| License Suspension/Revocation                      | X               | X                  | X                    | X                          | X                  | X              |
| Order Assessing Civil Penalty                      | X               | X                  | X                    | X                          | X                  | X              |
| Attorney General Request / CDM                     | X               | X                  | X                    | X                          | X                  | X              |
| Civil Settlement                                   | X               | X                  | X                    | X                          | X                  | X              |
| Criminal Referral                                  | X               | X                  | X                    | X                          | X                  | X              |
| Board of Technical Registration<br>Referral        | X               | X                  | X                    | X                          | X                  | X              |
| <b>MAJOR/MINOR LISTS</b>                           |                 |                    |                      |                            |                    |                |
| Add New Violation                                  | X               | X                  | X                    | X                          | X                  | X              |
| Move Violation Between Lists                       | X               | X                  | X                    | X                          | X                  | X              |
| Permit Violation Not on Lists                      | X               | X                  | X                    |                            |                    |                |
| Violation Language Change                          | X               |                    |                      | X                          |                    |                |

<sup>1</sup> Not required for Orders issued to address monitoring and reporting violations associated with public water systems serving less than 500 persons and assessing a penalty of at least \$3,000 for a Transient, Non-Community System, \$5,000 for a Community Water System, or \$5,000 for a School

# APPENDIX M9

## SUMMARY OF ENFORCEMENT APPROVAL PROCEDURES - REGIONAL OFFICES

|  | Unit<br>Manager | Section<br>Manager | Regional<br>Director | Division<br>Director | Enforcement<br>Coordinator | Deputy<br>Director | Director |
|--|-----------------|--------------------|----------------------|----------------------|----------------------------|--------------------|----------|
| Notice of Opportunity to Correct                 | X               |                    |                      |                      |                            |                    |          |
| NOC Closure Letter                               | X               |                    |                      |                      |                            |                    |          |
| Notice of Violation                              | X               | X                  | X                    |                      |                            |                    |          |
| Notice of Environmental Nuisance                 | X               | X                  | X                    |                      |                            |                    |          |
| NOV Compliance Documented Letter                 | X               |                    |                      |                      |                            |                    |          |
| NOV Closure Letter<br>(w/no further action)      | X               | X                  | X                    |                      |                            |                    |          |
| First Draft Consent Order                        | X               | X                  | X                    | X                    | X                          | X                  | X        |
| Final Consent Order                              | X               | X                  | X                    |                      |                            |                    |          |
| Compliance/Abatement Order                       | X               | X                  | X                    | X                    | X                          | X                  | X        |
| Termination of Administrative Order <sup>1</sup> | X               | X                  | X                    |                      |                            |                    |          |
| Criminal Referral                                | X               | X                  | X                    | X                    | X                          | X                  | X        |
| Board of Technical Registration<br>Referral      | X               | X                  | X                    | X                    | X                          | X                  | X        |

---

<sup>1</sup>Regional Offices may terminate only those administrative orders issued by the Regional Office.